Supreme Court, U.S.
FILED

(3)

No. 95-1514 MAR 19 1996

OFFICE OF THE CLERK

In the Supreme Court

OF THE

United States

October Term, 1995

THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

Petitioners,

VS.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI VOLUME II (Pages A176-A345)

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Application 91-01-039

134 PUR4th 184
44 CPUC2d 694

California Public Utilities Commission
June 17, 1992

BY THE COMMISSION:

INTERIM OPINION

Summary of Decision

Today we grant interim authority to Pacific Bell (Pacific), Contel of California, Inc. (Contel), and GTE California Incorporated (GTE) to provide certain new privacy related Custom Local Access Signaling Services (CLASS services or features), for a trial period of two years. We also grant authority to Pacific, Contel, and GTE for other non-privacy-related CLASS services. Rejecting the recommendation of the administrative law judge's proposed decision, we also grant the requests of applicants to provide Caller ID service, finding, provisionally, that under the terms of the

consumer protection, consumer education, and other requirements articulated in this decision, it is in the public interest and will not result in an unwarranted intrusion upon the privacy rights of California citizens.

Under the terms of our decision, Caller ID service is contingent upon each telephone subscriber having the option of selecting free per-call blocking, free per-line blocking, or free per-line blocking with per-call enabling. The default mode for subscribers who fail to make an election will be dependent upon the listed or published status of the subscriber's number. For those subscribers who currently hold unlisted or nonpublished numbers, or for certain emergency service organizations, the default mode will be free per-line blocking with per-call enabling. Free per-call blocking will be the default protection for all other subscribers.

The decision requires the deployment of a wide-ranging customer notice and education program by the applicants to facilitate universal awareness of the nature of the service and the means by which telephone users can protect their privacy and requires that such a program be submitted to CACD and approved by the Commission. Under the terms of our order, Caller ID service shall not be provided until the applicant has made a showing, approved by Commission order, that the applicant has notified all of its customers of the nature of the service and the means by which they may protect their privacy and has undertaken the steps necessary to assure that for calls initiated from private telephones in California, the display of the calling party's number to the call recipient is the result of the calling party's informed consent.

Periodic compliance and tracking reports must be filed with CACD.

While we approve interim rates with pricing flexibility, we require that each of the applicants file a new application, no later than 90 days after the issuance of the Commission's decision in the Implementation Rate Design (IRD) phase of the Commission's Alternative Regulatory Framework proceeding, Investigation (I.) 87-10-033, seeking final pricing and cost categorization in conformity with the guidelines enunciated in IRD.

Background

This consolidated proceeding originated with the filing by Pacific of Application (A.) 90-11-011, requesting authority to provide seven new COMMSTAR Custom Calling Services, Pacific's marketing term for its CLASS services. CLASS is the industry term for these services, which applicants seek to provide through deployment of a new technology, Signaling System Seven (SS7).

Pacific seeks authority to provide seven new COMMSTAR Features – Call Block, Call Return, Call Trace, Caller ID, Priority Ringing, Repeat Dialing, and Select Call Forwarding – with Category II pricing classification, including floor and ceiling rates for all proposed features, and flexible pricing and volume discounts for five of the features. It also seeks approval of new proposed rates for existing COMMSTAR Features to reflect new floor, recurring, and nonrecurring rates, a volume discount approach, and introductory pricing which would waive tariff rates for nonrecurring charges during the initial offering of COMMSTAR Features. In D.89-10-031, the Phase II decision of I.87-11-033, we identified Pacific's existing COMMSTAR Features as Category II services for pricing purposes, and, by Resolution

T-14045 (Jan. 24, 1990), we placed those features in Category II. The existing COMMSTAR Features affected by Pacific's application are Call Waiting, Busy Call Forwarding, Busy Call Forwarding Extended, Delayed Call Forwarding, Call Forwarding, Three-Way Calling, Speed Calling 8, Speed Calling 30, and Intercom Plus. The other applicants did not seek approval for flexibility of existing services.

Contel filed a similar request, A.90-12-065, seeking approval of its new Custom Calling Plus Features. It proposes to introduce seven new Custom Calling Plus Features – Call Block, Return Call, Call Trace, Caller ID, Priority Call, Repeat Call, and Selective Call Forwarding. It also requests pricing flexibility for these features.

GTE filed a comparable application, A.91-01-039, requesting authority to provide nine new SmartCall Services – Automatic Busy Redial, Automatic Call Return, VIP Alert, Call Block, Special Call Forwarding, Special Call Waiting, Special Call Acceptance, Call Tracing Service, Calling Number ID (CNID), SmartCall PAK 4400, and SmartCall PAK 4900.[1] GTE also requests pricing flexibility authorization for Category II services under Decision (D.) 89-10-031. The three applications were consolidated by Administrative Law Judge (ALJ) John S. Lemke. After conducting duly noticed public participation hearings across the state, reviewing some 3,900 letters from customers responding to the applications and to bill inserts explaining the proposed CLASS services, conducting some 21 days of evidentiary hearings and reviewing the voluminous briefs filed thereon, ALJ Lemke rendered a proposed decision which granted the authority requested, except with respect to Caller ID.[2]

We sustain the proposed decision insofar as it authorizes the CLASS services proposed by the applicants. We do not agree with the disposition of the Caller ID service contained in the proposed decision. Instead, we have concluded that the service may be offered on an interim basis, subject to the substantial consumer safeguards outlined below. We deem our order consistent with the public interest and the important privacy rights of California citizens.

As noted, the three applications are essentially similar. While we will discuss Pacific's proposal in some detail, we intend that our discussion be generally applicable to all three proposals.

Descriptions of the Products

Pacific contends that the proposed new services offer the ability to eliminate unwanted interruptions, improve the ability to complete calls, and increase options for handling abusive calls. The services will be offered to residential and business customers under a flexible pricing structure.

The proposed CLASS services are some of the products evolving from the Common Channel Signaling System 7 (SS7) technology. SS7 is an internationally standardized network management system. It allows for network and traffic management by computers, making the network more efficient and flexible. The products are made possible by the intelligence and signaling capabilities residing in SS7 and the network hardware and software technology available in the central offices. The features are available when necessary equipment is placed in interoffice facilities and central offices.

The CLASS services can be segregated into two groups. Services proposed in the first group has capabilities that can reveal the telephone number of the calling party by means of a video display on a specially designed telephone set, an audio announcement, or printed on the called party's telephone bill. The second group does not reveal the number of the calling party to the called party.

Privacy Related Class Services

Call Block

Call Block allows the customer to automatically block the receipt of incoming calls from a list of up to ten telephone numbers specified by the customer. Calls can be blocked from selected telephone numbers, or from a number from which a customer has just received a call. The Call Block subscriber can automatically add the last incoming call to his or her list by pressing #01# When this is done, the system voices back the number just added to the list, or, when per-call blocking is used by the calling party, it indicates that the last number added is a "private entry." The list of numbers may be changed by the customer at any time. Blocked callers will receive a recorded announcement stating "The party you are calling is not accepting this call." No toll charges will apply to the blocked call.

Call Return

The Call Return feature allows the subscriber to identify the number of the last person who called, unless that call is blocked as private. If the caller has requested that his number not be disclosed, the subscriber's Call Return announcement

will state: "The number of your last incoming call is a private number and cannot be announced." Otherwise, when the subscriber activates the Call Return feature, the number of the last call made to the customer's line will be announced and redialed automatically if the customer so chooses. The last caller's number, if busy, will be rechecked every 45 seconds for up to 30 minutes. Similar to Repeat Dialing, the customer will be alerted with a distinctive ring when the customer's line and busy number are free.

Call Trace

With this feature, the customer may automatically request that the company record a caller's originating number and the date and time of the call, as well as the date and time of the customer-initiated trace. The information is securely stored by the company and disclosed only to a law enforcement agency for investigation purposes.

Caller ID

The Caller ID[3] feature displays to the call recipient, on a specially designed phone or a device attached to a phone, the phone number from which the call is initiated. Customers interested in Caller ID service will need to obtain a device that displays the calling party's phone number from a retailer or other entity. If the caller has requested that his number not be displayed on the call recipient's display device, the Caller ID subscriber receiving the call will receive a "Private Number" message on his display device.

For ease of writing, the discussion of all privacy related CLASS services will be taken together and referred to as a group by the latter's name – Caller ID.

Nonprivacy Related Class Services

Priority Ringing

This service allows customers to distinguish incoming calls, from up to ten customer-prespecified numbers, by signaling the customer with a distinctive ringing pattern. If the customer also subscribers to Call Waiting, a distinctive tone is heard if an incoming call is one of the preselected set of priority numbers.

Repeat Dialing

Repeat Dialing permits the customer to have calls automatically redialed when calling a busy number. The busy line is checked every 45 seconds for up to 30 minutes. When the busy number and the customer's line are free, the customer is alerted by a distinctive ringing pattern. The customer can continue to make and receive calls while waiting for the distinctive ring.

Select Call Forwarding

This service permits a customer to forward calls from a preselected list of up to ten numbers. It can be used in conjunction with Call Forwarding. When used with Call Forwarding, the network first identifies any Select Call Forwarding numbers and routes them accordingly. Any incoming number not on the the Select Call Forwarding list will be forwarded according to the Call Forwarding instructions.

* * *

Consumer Safeguards

Blocking Options

PU Code § 2893 requires that "every telephone call identification service offered in this state . . . shall allow a caller to withhold display of the caller's telephone number, on an individual basis, from the telephone instrument of the individual receiving the call." Applicants propose to make available free per-call blocking, maintaining that this option satisfies the statutory blocking requirement. By entering an access code (*67)[4] before dialing any telephone number, delivery of the caller's number would be blocked for that call. The Caller ID subscriber would receive a "Private Number" message instead of the calling number on his display unit.[5]

Similarly, applicants believe that per-call blocking will protect the privacy of a caller's number when a called party subscribers to Call Block, Select Call Forwarding, and/or Priority Ringing. These features permit a subscriber to automatically add the last calling number to their feature list. If the caller activates per-call blocking, a subscriber will be permitted to add the caller's number to his list, but the number will not be disclosed. If the called party subscribes to the Call Return feature, he or she will be able to return the last incoming call even though the number is not disclosed. However, if the call is a toll call, the number returned through the use of the Call Return feature will, under the proposals submitted by the applicants, appear on the Call Return subscriber's bill.

Customer Notification and Education

Applicants propose detailed and extensive customer education plans set forth in the applications. The primary focus of the notices will be education regarding the changing nature of telephone use. To maximize the effectiveness of these notices, they will be made through the same channels that applicants will use to advertise the features, including bill inserts, targeted newspapers and magazines, radio, and television as well as a community outreach program. Applicants' notification plans include proposed bill insert language, directory instructions, and customer contact information.

Consumer Protection for "Billed to ESP" Services

Pacific has structured three of the proposed services to use a billing option referred to as "Billed to ESP." When using this option, the enhanced service provider (ESP) takes an order from the end user and places the order with Pacific for providing the services on the end user's line. The unique characteristics of the ordering require terms and conditions to protect the end user. The Billed to ESP option can be used with Call Block, Priority Ringing, and Select Call Forwarding.

ESPs and end users must understand their responsibilities for the Billed to ESP services. An ESP requesting service on behalf of an end user must warrant that they have the authority from the end user to place an order for service on the end user's line. The ESP is responsible for all ordering, including disconnects, as well as for customer education. The ESP pays the Pacific charges associated with the services provided on the end user's line. The ESP is responsible for payment of all

Bill to ESP charges, without regard to the status of the end user's line.

Pacific will send confirmation letters which acknowledge the order and any duplicative services. End users will be responsible for ordering the disconnect of potentially overlapping and/or redundant Pacific services that may exist on their line. Pacific is not responsible for charges between an ESP and the end user.

To ensure that end users are aware that services have been ordered by an ESP on their behalf, Pacific will include a one-time notice on the end user's Pacific bill under "Explanations of Other Charges and Credits." The notice will state that the service has been activated on the end user's line but is billed to its ESP.

An ESP will be required to prominently provide the following notice (which we have slightly modified from the proposed notice) on all billing for enhanced services which utilize a Billed to ESP service.

"This service is privately provided by (NAME OF ESP). Complaints regarding billing or service should be directed to (ESP ADDRESS AND TELEPHONE NUMBER). The provider of this service does pay for the use of regulated telephone facilities to provide service to you. You may inform the California Public Utilities Commission, Consumer Affairs Branch, of any unresolved problems at:

"(Northern and Southern California Commission Offices)"

Deployment Limitations

The initial deployment by Pacific is dependent upon the current availability of necessary equipment. For this reason, deployment will be introduced in stages. In stage one the new services will be available to Numbering Plan Administration (NPA) 415 (415 and 510) and 408 in Local Access and Transport Areas (LATA) 1 and 818, and 213 in LATA 5 after October 1, 1991. Stage two will expand the initial service areas to include NPAs 714 and the LATA 5 part of 805. It will also add the 707 NPA in LATA 1. Service for the second stage will begin approximately December 1, 1992.

Service will be largely, but not exclusively, limited to intraLATA calls. Wide-scale interLATA service was not expected to occur before late 1991. Any interLATA traffic will be handled by interexchange carriers. In all cases, the new features will only work when both caller and call recipient are served from capable switches interconnected by SS7 technology.

At introduction, the proposed features will not be technically compatible with the following services: Centrex, COMMSTAR II, Two-Party/Multi-Party Lines, Hotel/Motel and Hospital Lines, Manual and Direct Connections, Private Branch Exchange Service, lines served from some Remote Switching Systems, Foreign Exchange Lines, Wide Area Toll Service, and 800/900 Lines.

GTE's new CLASS features are ready for deployment now in many service areas extending from Lancaster and Montebello in the south, to Santa Maria, and also in Morgan Hill. Contel intended to deploy the new services in Gilroy in October 1991, and in its Victorville exchange service area in April 1992.

Per-Call Blocking and Caller ID Limitations

At the time the applications were filed, applicants were uncertain whether all telephone companies in other states will comply with per-call blocking requests on interLATA/interstate calls. Some interexchange companies (IECs) may not have the technical ability or business interest to receive and/or process the per-call blocking request. However, Pacific asserts it will work within a variety of national industry forums to have all companies adhere to the per-call blocking request.

Per-call blocking will only be available from telephones served from a capable switch. Callers attempting to use per-call blocking from outside the service area will receive a "reorder" signal (one which refers to a more rapid version of a busy signal indicating that the customer request could not be completed). Callers served from the capable switch will be able to use per-call blocking even for calls that travel outside the calling number delivery area.

Because of technical limitations, per-call blocking will not be available for calls from coin phones.[6] Pacific has requested switch vendors to determine when per-call blocking will be available for all coin phones. Pacific maintains, however, that since these phones are not "customer" phones within the meaning of PU Code § 2893, this switch limitation does not violate the current law.

Discussion

Caller ID

[1] We must determine whether the provision of the proposed Caller ID service is in the public interest and, if so,

whether the service can be offered to the public consistently with the privacy requirements established under state and federal law. After considering the evidence and arguments before us, we conclude that the public interest will be served by allowing the service to be offered on an interim basis for a period of two years, subject to reevaluation in light of experience. Our order is conditioned on the privacy considerations, customer education, and other requirements articulated in this decision.

Proponents of Caller ID contend that the service provides a greater degree of convenience, control, and personal security in the use of the telephone than without the service. They state that the service facilitates, *inter alia*, improved call screening and call management, the recordation of incoming calling party numbers for later use (even when the call is unanswered), the deterrence of obscene, threatening and harassing phone calls as well as calls by burglars or other parties engaged in criminal activities seeking to determine if a residence is occupied, the reduction of telephone fraud and nuisance or "junk" phone calls initiated by or against businesses or individuals, the deterrence of false alarms and bomb threats, the identification of and provision of assistance to parties in circumstances of emergency or distress, the provision of assistance to people with disabilities and to the elderly, and the preservation of evidence which may be used both in investigating crimes and at civil and criminal trials. They assert that the service will facilitate a business' processing of telephone calls from customers by speeding the retrieval of customer information and the routing of calls to customer service personnel best able to assist the customer. They state that if the service is authorized, many of these benefits will be secured by all telephone subscribers, not

merely those who subscribe to the service. Proponents also contend that most and perhaps all adverse impacts of the service on calling party privacy will be eliminated by the statutory blocking requirement.

Opponents of the service view it as being largely a marketing tool for businesses and argue that it will result in the routine infringement of calling party privacy rights. They contend that the service will facilitate the compilation, dissemination, sale, and abuse of personal information by individuals and businesses, particularly when used in conjunction with on-line directories and databases, and that it will encourage the creation and marketing of dossiers containing personal information about unwitting or unwary citizens as well as the initiation of widespread and largely unwanted telemarketing and "junk mail" campaigns. They state that the service is likely to facilitate subtle "redlining" practices involving unlawful discrimination, that it will expose victims of spousal or child abuse to undue risks of harassment and physical harm, that it will discourage the use of the anonymous crisis hotline services, such as those involving substance abuse, AIDS, rape, domestic violence, runaways, crime tips, abortion or pregnancy, suicide prevention, taxpayer assistance and the like, and that it will increase the risks of harm arising from telephone communication between professionals, such as psychiatrists, probation officers, and lawyers, and their dangerous or mentally ill clients.

Opponents also argue that the service has limited value in screening abusive or threatening phone calls because such calls are likely to be made with the calling party's number blocked or from a telephone not associated with or difficult to trace to the caller. They claim that the deterrence of such calls is likely to be as great simply by reason of the approval of

other CLASS features, such as Call Trace, and Call Return. They contend that answering machines and other CLASS services, such as Call Block, Call Return, Priority Ringing, and Call Trace, serve the purposes for which Caller ID is claimed to be useful or needed, and do so more effectively than does Caller ID. They contend that the per-call blocking option proposed by the applicants is inadequate to protect the privacy interests of California citizens, such as children, the elderly, the mentally disabled, and those whose familiarity with foreign telephone systems, whose lack of English-language skills or whose fears of technology stand as a barrier to their learning how to block effectively. And they argue that per-call blocking, which will necessitate the dialing of up to 14 digits in a split-area-code local calling area in order to block the calling party's number (*67-1-***-***-****), will be sufficiently inconvenient to chill or discourage the exercise of the calling party's free choice to block. They also argue that per-call blocking seriously undermines the privacy protections of subscribers with unlisted or nonpublished numbers who pay recurring charges for the express purpose of preserving the privacy of their telephone numbers.

There have been no formal market trials to reflect the attitudes of California customers toward CLASS services. Applicants have relied primarily upon surveys and studies conducted in Canada, New Jersey, Kentucky, and Rochester, New York, to demonstrate customer interest in the services. They indicate that they expect to sell Caller ID to less than 5% of single-line residence and business users in California.

[2] We begin our discussion by referencing California's policy for telecommunications embodied in PU Code § 709(b). That policy is "[t]o encourage the development and deployment of new technologies and the equitable provision

of services in a way which efficiently meets consumer need and encourages the availability of a wide choice of state-of-the-art services." We fully subscribe to this policy and reaffirm our commitment to assure that California citizens have a breadth of access to telecommunications and information services that is second to none.

We note that many states have authorized the provision of intrastate Caller ID service, with various conditions, and that the Federal Communications Commission (FCC) has before it a rulemaking proceeding in which it has proposed to authorize the provision of interstate Caller ID service. *See Notice of Proposed Rulemaking, In the Matter of Rules and Policies Regarding Calling Number Identification Service*, CC Docket No. 91-281, released October 23, 1991. We are reluctant to deprive California citizens of a new service which is, or will soon, be available in many jurisdictions across the country and where, at least according to the applicants, the technology involved will ultimately support a wide range of Information Age services such as home banking and mechanized information retrieval. Nevertheless, the provision of the service will significantly change the way in which the telephone is used and will place a duty to understand how the service operates on subscribers who do not purchase the service in order to protect their privacy rights. As a result, the question of whether the Caller ID service is in the public interest is a much closer one than for the other proposed CLASS services.

Balancing the arguments for and against a determination that the service is in the public interest implicates a number of significant concerns. The service involves a wide range of situations in which its availability would impose costs and confer benefits on calling and called parties. Many of these

circumstances and situations are impossible to predict without the benefit of experience. Accordingly, the overall costs and benefits of the service are not as readily ascertainable as with other proposed CLASS services. In addition, the privacy implications of authorizing the service are necessarily part of our public interest analysis. Yet those implications vary depending on the nature of the blocking options we require, the extent of the customer notice and education program we require and the way we allocate the recovery of costs as between the calling and called parties. The intrusiveness of the service on the privacy interests cannot be divorced from the *manner* in which the service is provided.

We have concluded that the public interest is served by authorizing Caller ID service on an interim basis for a trial period of two years, after which we can reevaluate our ruling in light of experience. However, for the reasons that follow, we are convinced that the service can only be offered consistently with the privacy protections and other requirements enumerated in this decision.

[3] The right of privacy establishes limits on the requirements a collective society may legitimately impose upon its individual members. It delineates a realm or zone within which individuals may exercise authority over their persons and lives without intrusion by the government or others.

Justice Louis Brandeis, in his oft-quoted dissent in *Olmstead v. United States* (1928) 277 U.S. 438, 478, described the right of privacy as "the right to be let alone – the most comprehensive of rights and the right most valued by civilized men." The Supreme Court has observed that the

right includes both an "individual interest in avoiding disclosure of personal matters" and an "interest in independence in making certain kinds of important decisions." *Whalen v. Roe* (1977) 429 U.S. 589, 599-600. In California our Supreme Court has identified a broad range of individual interests that have been accorded protection under the rubric of "privacy." *City of Carmel-by-the-Sea v. Young* (1970) 2 Cal.3d 259, 266-68.

We fully subscribe to these sentiments. Yet we find that they frame, rather than decide, the issue before us. The affirmative use of the telephone is a somewhat problematic setting for an assertion of the right to be "let alone. . . ." One who desires solitude has a ready safe harbor in resisting the urge to reach out through the instrumentality of the telephone. Indeed, from a privacy perspective, the more apparent threat is suffered by the target of a call.[7] The person receiving a telephone call has an interest in not being imposed upon by those with whom he or she chooses not to associate.[8] This interest is not insubstantial. In a very real sense, the called party's zone of privacy (and ability to control the peaceful enjoyment of personal surroundings) is intruded upon whenever a calling party demands attention in response to the ring the telephone. And yet one may defend a perfect zone of privacy simply by deciding not to subscribe to any form of telephone service. The fact that such an alternative is not deemed practicable in an age of modern communications illustrates the degree to which all persons surrender the privacy of a hermitage as the price of living in an inter-dependent society.

If the provision of Caller ID implicates the privacy interests of both the called party and the calling party, it threatens the anonymity of the caller, previously ensured by limitations

on telecommunications technology. Yet caller anonymity has not always been the rule. In the earliest days of telephone communications a local operator connected every call. The operator was aware of the source of the attempted call as well as the intended target instrument. Mechanical switching was a technological innovation which happened to confer anonymity upon the party originating the call. No party has presented any evidence that this was an intentional consequence of political reform of the telephone service in this or any other jurisdiction. The intended consequence of the call number identification service proposed by the pending applications is a rebalancing of this equation. Because we subscribe not only to the value of the right of privacy, but also believe that it is implicated whenever a person reasonably believes that an inquisitive action has been taken, we must subject any rebalancing to a functional analysis based on teachings drawn from both constitutional and statutory sources.

[4] While the subject has received little advocacy, the privacy concerns of a called party are drawn into the debate over the public interest in the availability of a Caller ID service. For reasons which we will not elaborate, we have concluded that the privacy interest of the called party with respect to Caller ID is of lesser significance than that of the calling party. Implementation of the disputed service will result in no diminution of the called party's privacy and, indeed, will enhance it. By contrast, the expectation of anonymity which has surrounded the calling party since the advent of mechanical relay switches is directly threatened by the deployment of this new technology.

A factor to be weighed in determining the need for governmental protection is the ability of the individual citizen to guard the interest in question. In this connection, there are

self-help steps available to the called party which are neither inconsiderable in dimension nor unknown in daily life. To begin with, if the called party prefers not to hear the message or the speaker, he may hang up the telephone, just as he may turn off the radio or television or change the channel in response to an unwanted broadcast, close his door to the uninvited guest or disregard undesired mail. *See Consolidated Edison Co. v. Pub. Serv. Comm'n* (1980) 447 U.S. 530, 542; *Martin v. Struthers, supra,* 319 U.S. at 146-147. In the alternative, such a party may protect his privacy from unwanted telephone calls, as many people do, by obtaining an non-published or unlisted telephone number and controlling its dissemination.

Similarly, nothing stops a called party from screening calls or protecting privacy through the use of an answering service, an answering machine, a voice mail service or other CLASS services, such as Priority Ringing, Call Return, Call Block or Call Trace. No one obtains telephone service without subjecting himself to the risk that he will at some time receive a call he would prefer not to answer, such as a wrong number. Such an infrequent nuisance is simply a cost of having telephone service and is hardly a serious infringement of the telephone user's privacy rights.

Repeated obscene, harassing or abusive telephone calls are, of course, another matter, yet there are a number of remedies, including the other CLASS services we authorize today, for dealing with such improper or unlawful use of the telephone. Moreover, the authorization of all CLASS services, including Caller ID, will likely deter such unlawful or improper practices to a fair degree with respect to all telephone call recipients, whether or not they subscribe to the Caller ID service.

In the context of the Caller ID service, the privacy interest of the calling party is the individual's interest in controlling personal information – information which, though limited in scope, may facilitate the compilation and dissemination of additional personal information through the use of available directories and databases. Moreover, the uses to which such information may be put by the call recipient and other parties to whom the call recipient discloses it are essentially unlimited.

Several of the parties have contended that California has the most restrictive privacy laws of any state in the nation. It is not necessary that we join in this sweeping assertion in order to acknowledge that our fellow citizens place a high value on the protection of their interest in individual privacy. The constitution, statutory[9] and decisional laws of California all point to this conclusion. More directly relevant to the subject of telecommunications is the fact that more than one-third of California telephone subscribers pay a premium for nonpublished service, i.e., service which renders the subscriber's name, address, and telephone number unavailable both in the telephone directory and through directory assistance. In many metropolitan areas, the percentage of nonpublished subscribers is significantly higher. Indeed, nine of the ten areas in the nation having the largest proportion of nonpublished telephone numbers are situated in California. Our Supreme Court has recognized a reasonable expectation of privacy in nonpublished information, including telephone numbers. *See People v. Chapman* (1984) 36 Cal.3d 98, 113.[10]

In November 1972, the People of California amended Article I, Section 1, of the California Constitution to include the right of "privacy" among the "inalienable" rights of "[a]ll people." Shortly thereafter, both the goals and scope of this

amendment were considered by the California Supreme Court. *White v. Davis* (1975) 13 Cal.3d 757 featured a taxpayer's suit against the police chief of the City of Los Angeles seeking to enjoin the alleged illegal expenditure of public funds in connection with the police department's covert intelligence gathering activities which included using departmental personnel as secret informers and undercover agents. According to the complaint, such persons enrolled in classes at UCLA where, posing as students, they submitted reports to the police department of classroom discussions. (*Id.*, at 762.) The *Davis* court was unanimous in concluding that:

> " . . . the surveillance alleged in the complaint also constitutes a prima facie violation of the explicit 'right of privacy' recently added to our state Constitution. As we point out, a principal aim of the constitutional provision is to limit the infringement upon personal privacy arising from the *government's increasing collection and retention of data relating to all facets of an individual's life. . . .* " (*Id.*, at 761, emphasis added.)

In subsequent discussion, the Court declared that "the moving force behind the new constitutional provision was a more focused privacy concern relating to the accelerating encroachment on personal freedom and security caused by increased surveillance and data collection activity in contemporary society." The ballot argument advanced by proponents of the constitutional initiative was then quoted as declaring that, "At present there are no effective restraints on the information activities of government and business. This amendment creates a legal and enforceable right of privacy for every Californian." Id. R 744.[11]

It will be noted that while *Davis* and *Chapman* were decided in the context of police information gathering and surveillance activities, the ballot argument swept beyond the information gathering activities of government to embrace those of "business." The issue which we must decide is whether the privacy concerns articulated by those opposed to the deployment of Caller ID fall within the ambit of the goals articulated by the voter-approved constitutional amendment or within the further goals identified by our Supreme Court. The issue need not be decided on a "yes" or "no" basis, for it is possible for a privacy interest which was not expressly targeted for protection to be implicated by both the language and spirit of our evolving attitude toward privacy. Recognition of such an implication would then inform us of the degree to which we should condition our authorization of this service upon protective steps designed to secure an appropriate measure of privacy.

We have concluded that the authorities which speak most forcefully on the issue of privacy are directed at disciplining forces of government (especially the police) and protecting the right of citizens to engage freely in what we may term "political speech." By contrast, we have not been cited to, nor have we been able to discover, any precedent which balances the privacy interests of private parties in initiating or receiving residential telephone calls. For reasons which we shall now explain, we are not surprised at this paucity of authority, for we deem such activity to arise beyond the clear concern of privacy as a "constitutional right."

We begin with the Court's impressive teachings on the need to recognize a restraint upon the information gathering activities of government with respect to those items of personal information in which the citizen has a "reasonable

expectation of privacy." Particularly instructive is the opinion by Justice Mosk writing for the court in *Burrows v. Superior Court* (1974) 13 Cal.3d 238. *Burrows* is significant for its clear holding that a citizen's privacy right as against government intrusion is not rooted in any specific place (e.g., one's home) but extends to any circumstances which the citizen reasonably expects to lie within a realm of personal privacy. While acknowledging that federal cases have been less generous in recognition of the scope of the privacy right, the Court concluded that in California bank statements and account records are protected notwithstanding the fact that they remained in the bank's custody. Accordingly " . . . any bank statements or copies thereof obtained by the sheriff and prosecutor without the benefit of legal process were acquired as the result of an illegal search and seizure (Cal. Const., Art. I § 13) . . . " 13 Cal.3d at 245. In the same term the Court concluded that covert police surveillance in university classrooms "epitomizes the kind of government conduct which the new constitutional amendment condemns." *White v. Davis, supra,* 13 Cal.3d 757, 775. Five years later, the Court renewed its emphasis on the reasonable expectation of privacy theme. Again it spoke in the context of a criminal prosecution. In *People v. Blair* (1979) 25 Cal.3d 640, the Court concluded that the defendant had a reasonable expectation that credit card and telephone use records were private and thus protected from government intrusion absent judicial process. Building on an observation he had uttered in *Burrows,* Justice Mosk harmonized the Court's protective strategy. "No less than a bank statement, the charges made on a credit card may provide a 'virtual current biography' of an individual." 25 Cal.3d at 652.[12]

The "virtual current biography" theme was offered by the Court as a means of harmonizing prior decisions in *People v. Chapman, supra,* 36 Cal.3d 98, 105-111. The Court concluded that a California citizen who had taken the trouble to purchase an unlisted telephone number has a "constitutionally protected expectation of privacy" which was invaded when the police obtained her name and address from the telephone company without first obtaining a warrant.[13]

> "The holdings in *Burrows* and *Blair* compel one conclusion-that respondent McGee demonstrated a reasonable expectation of privacy in her unlisted name, address, and telephone number. Disclosure of her name and address to the telephone company was not volitional since it was prerequisite to obtaining a telephone. The disclosure was plainly made for the limited purpose of billing. Moreover, by affirmatively requesting and paying an extra service charge to the telephone company to keep her unlisted information confidential respondent took specific steps to ensure greater privacy than that afforded other telephone customers. Surely those steps entitle respondent to as great a degree of privacy at this court has extended to the customers in *Burrows* and in *Blair*.
>
> "[W]here "disclosure of the client's name might serve to make the client the subject of official investigation or to expose him to criminal or civil liability" (*Hays v. Wood, supra*, 25 Cal.3d at 785), the name itself may be protected by the privilege.
>
> "Here, it is the constitutional right to privacy rather than a privilege that is being invoked. However, the attorney-client privilege cases are analogous in that in both situations the government is seeking the name and address of a person about whom it already has a great deal of information. In

> many cases, it is seeking the name and address of a person in order to prove an essential link to establish a 'virtual current biography.' (*Burrows v. Superior Court, supra*, 13 Cal.3d at p. 247.) Thus, protection of the individual's name and address is the only way to protect the 'virtual current biography.' "[14]

As we have previously noted, current telecommunications technology provides anonymity to a party who elects to initiate a telephone call. Until the call is answered either personally or mechanically by the targeted number, the recipient has no means of discerning the source of the call and thus determining whether it is a welcome or obnoxious intrusion on solitude. To a greater degree than any of the other advanced calling gestures proposed by applicants, Caller ID threatens this equation. Some have urged that we recognize a constitutional right to remain anonymous and have cited decisional law containing language suggestive of such a right. We have read this cases and find that they speak to a right to engage in political speech, rather than other forms of speech, free of any government imposed condition that the speaker provide his or her name, address or other identification.[15]

In *Talley v. California* (1960) 362 U.S. 60, the Court invalidated a Los Angeles ordinance which forbade distribution, in any place and under any circumstances, any printed handbill which did not include on its face the name and address of the person who prepared, printed or sponsored it. The petitioner was arrested and tried in municipal court for distributing a handbill which urged a consumer boycott against business entities which refused "equal employment opportunities to Negroes, Mexicans or Orientals." *Id.*, at 61. While the handbill contained a reference to the "National

Consumers Mobilization," and provided the address and telephone number of that organization, the municipal court concluded that it failed to meet the requirements of the ordinance that it identify the "person" who sponsored or effected the distribution.

The Court began by invoking an historic line of cases which had held void on their face ordinances which required a government license as a precondition to the distribution of public handbills or literature. Noting that such ordinances abridged constitutionally guaranteed rights of freedom of speech and press, the *Talley* Court characterized the issues as follows:

> "The board ordinance now before us, barring distribution of 'any handbill in any place under any circumstances,' falls precisely under the ban of our prior cases unless this ordinance is saved by the qualification that handbills can be distributed if they have printed on them the names and addresses of persons who prepared, distributed, or sponsored them . . .
>
> "There can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' (citation.)
>
> "Anonymous pamphlets, leaflets, brochures, and even books have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either approximately or not at all . . . It is plain that

anonymity has sometimes been assumed for the most constructive purposes.

"We have recently had occasion to hold in two cases that there are times and circumstances when States may not compel members of groups engaged in the dissemination of ideas to be publicly identified. [citations.] The reason for those holdings was that identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance. This broad Los Angeles ordinance is subject to the same infirmity. We hold that it . . . is void on its fact."[16]

Eight years after *Talley*, the California Supreme Court considered the validity of an order of this Commission approving tariff schedules which required that subscribers who used the telephone system to transmit recorded messages include in the recording the name and address of the individual or organization responsible for the message. The Commission order was assailed as violative of the freedom of speech guaranteed by the First and Fourteenth Amendments to the United States Constitution and by Article I, Section 9 of the California Constitution. The Court, speaking through Justice Peters, agreed and annulled our order. *Huntley v. Public Utilities Commission* (1968) 69 Cal.2d 67. Drawing upon numerous decisions of the Supreme Court of the United States, the Court made the following instructive points. It concluded that freedom of speech encompasses more than simply the right to be protected from censorship of content. It extends to communication in its most fundamental sense embracing both the right to disseminate information and the right to receive it. Improper restraints on communication are offensive in that they restrict the dissemination of ideas upon which a free society is ultimately dependent. In order to guard

this free flow of ideas, those charged with the protection of constitutional rights must be sensitive to subtle as well as patent restraints imposed by governmental interference. It continued:

> "There can be no doubt that disclosure requirements may deter free speech. It must be remembered that the right of freedom of speech is primarily intended to protect minority views . . .
>
> "The majority may freely assert its beliefs and is secured freedom of speech by the very fact of its mathematical majority. It is the minority, whether of the left of the right, which must overcome accepted views. To succeed, the minority must persuade others until, as is the nature of a democratic society, it hopefully attains the status of the majority. In doing so, the minority will frequently be subjected to criticism and debate, a necessary adjunct to the ascertainment of truth. But, depending upon the popularity of the minority position and the inviolability of the majority beliefs, the proponents of change may also be subjected to harassment, threats and violence.
>
> "*In this context,* as correctly contended by petitioners, *anonymity may be an indispensable prerequisite to speech.* When the content of speech may lead to harassment or reprisal, fear or apprehension may deter expression in the first instance. History is replete with unpopular ideas which now form the foundation of modern society's mores and laws, but which could only be asserted anonymously when first expressed." Id., at 72-73. (Emphasis added.)

In contrast to cases which defend privacy interests by warding off pervasive governmental intrusion and the compilation of "virtual current biographies" of its citizens, and

apart from efforts to protect the vigorous exchange of political speech, the implementation of Caller ID posits rival privacy interests of private citizens. Thus we find instructive a line of cases which suggest a resolution of the competing rights of private citizens. Although rooted in fact patterns directly implicating the coercive power of the state, we derive guidance from the court's decisions which have balanced the constitutional privacy interest of a plaintiff who commences civil litigation to withstand the demand of a defendant for compulsory discovery. In *Britt v. Superior Court* (1978) 20 Cal. 3d 844, 859, the plaintiffs were property owners near on airport operated by the local port district. They commenced litigation against the district, asserting a diminution of property values, personal injuries, and emotional suffering occasioned by the proximity of the airport. Defendant sought to discover the plaintiffs' lifelong medical history including any treatment history for physical or emotional complaints or illness. The plaintiffs sought to resist these discovery requests by invoking their constitutional right to privacy. Defendant countered that such a right, if it otherwise obtained, had been waived with the commencement of the civil litigation. The court responded:

> " . . . while the filing of a lawsuit may implicitly bring about a partial waiver of one's constitutional right of associational privacy, the scope of such 'waiver' must be narrowly rather than expansively construed, so that plaintiffs will not be unduly deterred from instituting lawsuits by the fear of exposure of their private associational affiliations and activities."

Accordingly, defendant's discovery rights were extended only to private matters directly relevant to the plaintiffs' claim and essential to the fair resolution of the lawsuit. The

continued vitality of this balancing approach was affirmed as recently as 1987. See *Vinson v. Superior Court* (1987) 43 Cal.3d 833, 842.[17]

From these authorities we derive the following conclusions. First, we need not resolve the dispute over a federal constitutional right of privacy or its scope in relation to telecommunications. This is because we are convinced that the explicit right of privacy established by Article I, Section 1 of the California Constitution is broader in scope than the corresponding federal right. *California v. Greenwood* (1988) 486 U.S. 35, 43-44; *Committee to Defend Reproductive Rights v. Myers* (1981) 29 Cal.3d 252, 281; *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 130, fn.3; *Urbaniak v. Newton* (1991) 226 Cal.App.3d. 1128, 1136; *American Academy of Pediatrics v. Van de Kamp* (1989) 214 Cal.App.3d. 831, 841.[18] Accordingly, if the Caller ID service can be offered without contravening the state constitutional privacy right, *a fortiori* it does not violate federal constitutional privacy protections. Second, California's privacy protections are most intensely engaged when the threat is one of governmental gathering or compilation of information which our citizens reasonably expect to hold within a realm of personal privacy, or when there are state sponsored or sanctioned inhibitions on freedom to engage in political speech.[19] We miss a sure foothold if we fail to grasp the context in which California voters, legislators, and judges have spoken to these concerns and if we employ their sentiments to decide matters manifestly beyond their contemplation. Notwithstanding this major limitation, the "reasonable expectation of privacy" test may embrace a state of mind fostered by technological conventions. Such is the case with caller anonymity. Even more clear is the teaching of *People v. Chapman*, supra, 36 Cal.3d 98,

that a heightened expectation of privacy is to be recognized in the instance of those Californians who have taken the trouble and assumed the added cost to secure unlisted and published telephone service. To the extent that blocking options and educational efforts may redress this balance, we find no impediment to authorizing a two-year experimental deployment of Caller ID in California.

Blocking Options

As noted, the issue of whether to authorize Caller ID is inextricably linked with the issue of the manner in which the service is provided. The first inquiry we undertake is which of several blocking options should be provided. The three possible blocking options are:

1. Per-call blocking, as proposed by applicants;

2. Per-line blocking; and

3. Per-line blocking with per-call enabling.

Per-call blocking is activated by the calling party by pressing *67 on a touchtone phone before dialing, thereby blocking disclosure of the calling party's number. The Caller ID subscriber then would receive a "Private Number" message instead of the calling party's number on his or her display unit. If the calling party does not activate the *67 code, the calling party's number would be disclosed to the Caller ID subscriber. Per-line blocking precludes disclosure of the calling party's number for all calls made from a blocked access line. All parties with access lines would have a choice of per-line or per-call blocking. In per-line blocking with per-call enabling, a party could specify to the telephone

company that he or she wants all calls blocked, except those specifically unblocked by pressing a three-digit code.[20]

PU Code § 2893 requires us to assure ourselves, by rule or order, "that every telephone call identification service offered in this state by a telephone corporation . . . shall allow a caller to withhold display of the caller's telephone number, on an individual basis from the telephone instrument of the individual receiving the telephone call placed by the caller." The applicants state that this provision is intended to require per-call blocking and that such a blocking option satisfies all federal and state legal requirements.

We agree with the applicants that § 2893 may be interpreted as requiring the provision of per-call blocking. A per-call blocking option allows the caller "to withhold display of the caller's telephone number, on an individual basis, from the telephone instrument of the individual receiving the telephone call." However, because the statute's broad and somewhat ambiguous description of a blocking mechanism fails to specify any particular blocking option, we read it requiring per-call blocking as the minimum privacy protection for the calling party's number. As we read the statute, it does not preclude us from requiring other, more restrictive blocking options to protect privacy in place of, or in addition to, per-call blocking.

Applicants argue that requiring blocking options more restrictive than per-call blocking will devalue the service. They contend that the fewer the instances in which a caller blocks the display of his telephone number, the more valuable the service will be to the Caller ID subscriber that purchases the service and to the telephone company that sells it. Even if this were true, it is not our function to create economic value

in the service by making it difficult or inconvenient for California citizens to exercise their right not to disclose their calling party numbers. If the service is to be offered consistently with constitutional guarantees and the public interest, it must be offered in a way that maximizes the ease and freedom with which California citizens may choose not to disclose their calling party numbers. We will not compromise an individual's free exercise of his or her right of privacy in order to place in the hands of the Caller ID subscriber a more valuable mailing list, a marginally better method of screening or managing telephone calls, or even a slightly more effective deterrent to unlawful or abusive uses of the telephone.

Moreover, it is by no means clear that the applicants' fears are justified. Centel Nevada has offered the service in Nevada with a choice of per-call or per-line blocking with no apparent devaluation of the service. It achieved a customer penetration rate between December 1990 and June 1991 of 5.1% – a penetration rate not significantly different than that anticipated by the applicants here. Moreover, if applicants' surveys and studies are to be credited, a substantial portion of the public sees no need to block and would presumably choose the per-call blocking option. It will be the applicants' challenge to persuade members of the public not to block by providing cogent reasons why it is not in their interest to do so. We will not assist the applicants' selling effort by infringing upon individual privacy rights.

[5] Our goal must be to ensure, to the greatest extent possible, that the decision to allow a calling party's number to be displayed is the result of informed consent and a knowing and intelligent waiver of the right of privacy. To this end, we will seek to maximize the ease and freedom with which a

caller may choose not to disclose the telephone number from which he or she is calling.

[6] We conclude that all three blocking options – per-call blocking, per-line blocking, and per-line blocking with per-call enabling – should be made available by each of the applicants and that the calling party should be permitted to choose among those options. Per-line blocking will provide protection for those who prefer not to disclose their calling party number under any circumstances and for those who need special protection. The privacy rights of subscribers with per-line blocking will not be violated as the calling party's number may not be transmitted over an access line with per-line blocking.[21]

Per-line blocking with per-call enabling will provide convenient protection for those who believe they would prefer to block their calling party number in most circumstances. There may well be circumstances in which a calling party with per-line blocking will desire to disclose his telephone number to the call recipient. Therefore, if we failed to require per-line blocking with per-call enabling as an option, subscribers desiring greater privacy protection might be discouraged from choosing per-line blocking without per-call enabling. This would create an incentive for those subscribers to choose the arguably lesser protection of per-call blocking. Thus failure to require per-line blocking with per-call enabling as an option would greatly reduce customer choice. The privacy rights of those subscribers with both per-line blocking and per-call enabling will not be violated because the calling party's number may not be transmitted unless the calling party affirmatively activates the enabling code to facilitate disclosure of his or her number. Such affirmative action manifests the calling party's informed consent to disclose his or her number

and the knowing and intelligent waiver of his or her right of privacy.

Per-call blocking will facilitate a caller's protecting his or her privacy on a selective call-by-call basis by activating the *67 code. The privacy rights of those subscribers with per-call blocking will not be violated because, in affirmatively choosing the per-call blocking option, the subscriber assumes the burden of blocking the transmission of his or her number and also assumes the risk that he or she may fail to do so.

Providing customers with these alternatives will enable us to conclude in virtually all circumstances that where the calling party's number is disclosed, the disclosure is the result of informed consent. Snce the calling party will have the choice of selecting per-line blocking, his or her choice of another option which may permit display of the calling party number in some circumstances means he or she voluntarily assumes the risk of failing to utilize the chosen option. So long as telephone subscribers are fully informed of the nature of the service and the nature of their blocking options, disclosure will be consensual and will manifest a waiver of the calling party's privacy rights.[22]

Default Blocking Options

In our view, Article I, Section 1, of the State Constitution and PU Code § 2893 require that all telephone subscribers be given the capability of blocking display of the calling party's number. We must therefore address the default blocking option that will be provided to subscribers who fail to make a

choice. Some of these subscribers may simply have determined not to exercise the right to choose, leaving that determination to the standards we announce today. Others, for reasons such as the failure to receive information about the service, language problems, or a failure to understand the nature of the service or their option to choose, may have involuntarily failed to choose.

[7] We conclude that the default blocking option for subscribers who pay for unlisted[23] or nonpublished[24] telephone numbers and who affirmatively fail to choose a blocking option must receive per-line blocking with per-call enabling. As we have noted, *People v. Chapman, supra,* 36 Cal.3d at 108, found a heightened expectation of privacy in unlisted telephone subscriber information. Thus, we think that subscribers with unlisted or nonpublished numbers who fail to make a choice should receive per-call blocking with per-call enabling as a default option. This will assure the privacy of the calling party in the absence of an affirmative act to disclose the calling party's number. Only such affirmative action will manifest the calling party's consent to the disclosure of his number.

[8] Emergency service organizations, such as police departments and shelters for battered spouses or runaways, should receive the default protection of per-line blocking with per-call enabling. We deem it unlikely that such organizations will allow the determination of a blocking option to result by default. Still, these organizations may have special and legitimate reasons, such as the facilitation of undercover investigations or the protection of persons from bodily harm, for precluding dissemination of the calling party number without an affirmative act. The applicants shall include a definition of

emergency service organizations entitled to such default protection in their tariff filings.

[9, 10] For other subscribers who fail to make a choice of blocking option, we conclude that the appropriate default blocking option is per-call blocking. The comprehensive customer notification and education program we outline below seeks to ensure that customers will be fully apprised of their options, so that a failure to make a choice will signify a determination to rely on the default options. To the extent the customer notification and education program meets its intended purpose, the privacy rights of those subscribers who receive default per-call blocking will not be infringed because the subscriber will have assumed the burden of activating the *67 code to block transmission of his or her number and will have assumed the risk that he or she may fail to do so. However, as an added protection for these subscribers, we direct the applicants, prior to offering the service, to provide each telephone subscriber with a clear and easily understandable notice informing the subscriber (1) of the blocking option applicable to that party's telephone service, (2) whether that option was determined by choice or by default, (3) of the right of the subscriber to change the blocking option applicable to that subscriber's service one time free of charge, and (4) of the nature of the available blocking options to which the subscriber might wish to change.

All telephone users should be aware that with respect to telephones other than the customer's, any of the three blocking options may be involved. The blocking option applicable to a particular telephone will reflect the choice of the subscriber purchasing that service. Telephone users will therefore have to ascertain the nature of the option applicable to a

particular telephone in order to assure that they are effectively blocking the calling party's number. We direct the applicants to ensure that there is a simple means of identifying the nature of the blocking option applicable to a particular telephone and that the public is fully informed of this means. Such a means might include a recorded message when access codes inappropriate to the relevant blocking option are undertaken, or the absence of a second dial tone either when the *67 code is entered on a line-blocked phone or when the per-call enabling code is entered on a phone not programmed for that option. The applicants should attempt to agree on the best means from the consumer's perspective, taking into account simplicity and reliability, and should attempt universal deployment of that means and a wide-ranging effort to publicize it. Information regarding the means of identifying the blocking option applicable to a particular telephone should be included in the customer notification and education program.

The record in this case suggests that coin phones and certain other configurations,[25] at least for the present, will not be capable of utilizing blocking. The applicants should widely publicize this fact and should undertake to ensure that all coin phones, and other blocking-incompatible configurations, under their control have affixed to them a notice informing the user that blocking of the calling party's number is not currently possible from that phone.[26]

Charge for Blocking Options

[11] We conclude that each of the blocking options shall be provided free of charge to the subscriber for the initial selection (whether by affirmative choice or by default) and for one additional change of blocking option.[27] The

applicant shall take steps to assure that any such change order is processed and effected expeditiously. If the subscriber should desire additional changes of blocking options, the applicant may impose a nonrecurring charge for each such change order not to exceed cost. PU Code § 2893(b) provides that "[t]here shall be no charge to the caller who requests that his or her telephone number be withheld from the recipient of any call placed by the caller." We think the provision of the initial selection and one change free of charge exceeds the statutory requirement. Moreover, we view this approach as consistent with our desire not to impose a cost on the exercise of the right of privacy by California citizens.

* * *

Findings of Fact

1. Applicants (Pacific, GTE, and Contel) have requested authority to provide several new CLASS features, as well as approval of rates and Category II pricing classification for those services, including floor and ceiling rates and flexible pricing for several of the services, and volume discount pricing therefor.

2. Pacific's application covers seven new COMMSTAR Custom Calling Services (Call Block, Call Return, Call Trace, Caller ID, Priority Ringing, Repeat Dialing, and Select Call Forwarding).

3. Contel's application covers the following new Custom Calling Plus Features: Call Block, Return Call, Call Trace, Caller ID, Priority Call, Repeat Call, and Selective Call Forwarding.

4. GTE's application covers nine new SmartCall Services (Automatic Busy Redial, Automatic Call Return, VIP Alert, Call Block, Special Call Forwarding, Special Call Waiting, Special Call Acceptance, Call Tracing Service, Calling Number ID (CNID), SmartCall PAK 4400, and SmartCall PAK 4900).

5. The industry term for these new services is CLASS, and applicants seek to provide these services through deployment of a new technology known as Signaling System Seven (SS7), which is an internationally standardized network management system allowing for network and traffic management by computers.

6. While each applicant has used distinctive product names in packaging its CLASS services, consumers would be well served if applicants would agree among themselves on a single and fairly descriptive name for the corresponding offerings to be provided in this state.

7. Pacific also requests approval of new proposed rates for its existing COMMSTAR Features to reflect new floor, recurring and nonrecurring rates, a volume discount approach, and introductory pricing which would waive tariff rates for nonrecurring changes during the initial offering of COMMSTAR Features; the other applicants do not seek approval for flexibility of existing services.

8. D.89-10-031 established certain categories with respect to pricing policy, and determined that Category II should include discretionary or partially competitive services for which LECs retain significant market power. The decision provided that Category II services may be flexibly priced, and that rate floors therefor should be based on direct-embedded costs.

9. The CLASS features sought to be offered by applicants in these proceedings are discretionary and/or partially competitive, and properly included in Category II. The price floors developed for the proposed CLASS and existing COMMSTAR services reflect the direct-embedded costs applicable to each feature, as well as those costs applicable on the volume discount bases requested by applicants.

10. The Caller ID feature displays to the call recipient, on a specially designed phone or a device attached to a phone, the phone number from which the call is initiated.

11. If the caller has requested that his/her number not be displayed on the call recipient's display device, the Caller ID subscriber receiving the call will receive a "Private Number" message on the display device.

12. There have been no formal market trials to reflect the attitudes of California customers toward CLASS services, and applicants have relied upon surveys and studies conducted in Canada, New Jersey, Kentucky, and Rochester, New York, to demonstrate customer interest in these services; applicants expect to sell Caller ID to less than 5% of single-line residence and business customers.

13. California's telecommunications policy encourages the development and deployment of technologies and the equitable provision of services in order to efficiently meet customer needs and encourage the availability of a wide choice of state-of-the-art services.

14. The Commission is committed to assuring that Californians have a breadth of access to telecommunications and information services that is second to none.

15. Caller ID service, however, will significantly change the way the telephone is used and will impose upon subscribers who do not purchase the service a duty to understand how the service operates in order to protect their privacy rights; the question of whether Caller ID is in the public interest is a much closer one than for the other proposed CLASS services.

16. The privacy concerns of a called party are drawn into the debate over the public interest and availability of Caller ID; however, these concerns are less directly threatened than the privacy interests of the calling party.

17. Experience since the implementation of the mechanical switching has furnished the caller anonymity without according the called party any added measure of protection for his/her right to be let alone.

18. The privacy interest of the called party with respect to Caller ID is less significant than the interest of the calling party, because if we were to authorize the Caller ID service, the called party's privacy would be protected no less than it presently is protected without the service.

19. The expectation of anonymity which has surrounded the calling party since the advent of mechanical relay switches is directly threatened by Caller ID.

20. The privacy interests of the calling party is to control personal information – information which, though limited in scope, may facilitate the compilation and assimilation of personal information through the use of available directories and databases; the uses to which such information may be put by the call recipient and other parties to whom the call recipient discloses it are essentially unlimited.

21. The constitution, statutory, and decisional laws of California demonstrate that Californians place a high value on the protection to their interest in individual privacy.

22. More than one third of California telephone subscribers pay a premium for nonpublished service, i.e., service which renders the subscriber's name, address, and telephone number unavailable both in the telephone directory and through directory assistance.

23. Current telecommunications technology provides anonymity to a party who elects to originate a telephone call; however Caller ID threatens this equation.

24. As opposed to defending privacy interests against pervasive government intrusion, and apart from efforts to protect the vigorous exchange of political speech, the implementation of Caller ID requires the balancing of the rival privacy interests of private citizens.

25. If Caller ID service is authorized without strict consumer safeguards, there will be a risk that the calling party's privacy rights will be infringed.

26. A heightened expectation of privacy is to be recognized in the case of those Californians who have assumed the added cost of securing unlisted and nonpublished telephone service.

27. To the extent that blocking options and educational efforts may adequately balance the rival privacy interest of private citizens, this Commission finds no impediment to authorizing a two year experimental deployment of Caller ID in California; however the Caller ID service can only be offered if it is offered consistently with the consumer safeguards and other requirements enumerated in this decision.

28. It serves the public interest to authorize the provision of the Caller ID service on an interim basis for a trial period of two years, after which the Commission can reevaluate the service in light of experience.

29. Per-call blocking is activated by the calling party by pressing *67 on a touchtone phone before dialing, thereby blocking disclosure of the calling party's number.

30. Per-line blocking precludes disclosure of the calling party's number for all calls made from a blocked access line.

31. In per-line blocking with per-call enabling, a party may specify that he/she wants all calls blocked, except those specifically unblocked by pressing a three-digit code.

32. If Caller ID is to be offered consistently with constitutional guarantees and the public interest, it must be offered in a way that maximizes the ease and freedom with which Californians may choose not to disclose their calling party numbers.

33. Our goal is to ensure, to the greatest extent possible, that the decision to allow a calling party's number to be displayed is the result of informed consent and a knowing and intelligent waiver of the right of privacy.

34. All three blocking options – per-call blocking, per-line blocking, and per-line blocking with per-call enabling – should be made available by each of the applicants, and the calling party should be permitted to choose among these options.

35. Per-line blocking will provide protection for those who prefer not to disclose their calling number under any circumstances and for those who need special protection.

36. Per-line blocking with per-call enabling will provide convenient protection for those who believe they would prefer to block their calling party number in most instances.

37. The failure to offer per-line blocking with per-call enabling as an option would greatly reduce customer choice, as those desiring greater privacy protection might be discouraged from choosing per-line blocking without per-call enabling due to the inflexibility of that option.

38. The privacy rights of customers who choose per-line blocking and per-call enabling will not be violated because the calling party's number may not be transmitted unless the calling party affirmatively activates the enabling code; such affirmative action manifests the calling party's informed consent to disclose his/her number and the knowing and intelligent waiver of his/her right of privacy.

39. The privacy rights of those subscribers who choose per-call blocking will not be violated because, in affirmatively choosing the per-call blocking option, the subscriber assumes the burden of blocking the transmission of his/her number and assumes the risk that he/she may fail to do so.

40. Article I, Section 1, of the State Constitution and PU Code § 2893 require that all telephone subscribers be given the capability of blocking display of the calling party's number, and therefore require adoption of a default blocking option.

41. Those who pay for unlisted or nonpublished telephone numbers, and who affirmatively fail to choose a blocking option, must receive per-line blocking with per-call enabling; this is consistent with a heightened expectation of privacy in unlisted telephone subscriber information.

42. Emergency service organizations, as defined in applicant's tariffs, may have special and legitimate reasons for precluding dissemination of the calling party's number without an affirmative act; these reasons justify providing such organizations with the default protection of per-line blocking with per-call enabling.

43. Other subscribers who fail to make a choice of blocking option following the comprehensive customer notification and education program and the additional advance notice requirements specified in this decision, must receive per-call blocking.

44. Because subscribers who receive per-call blocking as a default option will have been notified that they must activate the *67 code to block transmission of the calling number, it is reasonable to conclude that such subscribers have assumed the risk for failure to activate the code.

45. The use of Caller ID service by a subscriber who possesses the capability of receiving the calling party's number *only* because he/she has lawfully purchased the service from "a provider of electronic or wire communication service" pursuant to a duly authorized tariff satisfies the exceptions of 18 U.S.C. Section 3121(b); we perceive no violation of the Federal Wiretap Law in our authorization of Caller ID service.

46. In view of the manner in which we are authorizing Caller ID service, there is no violation of California penal statutes prohibiting the wiretapping, interception, eavesdropping on and recordation of confidential communications over the telephone.

47. The evidence of "redlining" implications of Caller ID service is largely speculative; however we will monitor the situation closely in accordance with the provisions of this order.

48. A charge of $5 for each activation by Pacific and Contel for providing Call Trace will reflect the direct-embedded costs incurred when providing such service, and is a reasonable charge. A cap equal to the charge for two activations from the same calling number in a billing period is also reasonable in connection with Call Trace service provided by Pacific and Contel, as is a charge equal to the charge for five activations from all numbers in the same billing period. A flat monthly charge of $5 by GTE for Call Trace will be reasonable, since GTE is technically unable to currently provide the service on a per-activation basis.

49. Call Return involves delivering to the party making a return call, the telephone number of the original calling party on the monthly billing statement, if made as a toll call; in circumstances where the Call Return service is utilized to place a return call to a party who called from a blocked number, and a toll charge for the return call is placed on the bill, the last four digits of the blocked number should not be disclosed, in the interests of privacy protection.

50. The CNEPs submitted with the applications involve principally the provision of Caller ID, and are not necessary in connection with the other CLASS features. However, customer notification and instruction in connection with Call Trace would be particularly beneficial because of the potential benefit associated with that service.

51. Issues involving unbundling, nondiscriminatory access, and imputation are being addressed in the IRD phase

of the Commission's Alternative Regulatory Framework proceeding, I.87-10-033.

52. In the agreement (Exhibit 13) between MCI, Pacific, and DRA, Pacific is required to furnish supporting workpapers demonstrating that price changes between adopted floor and ceiling prices protect price floors. The agreement also provides that Pacific demonstrate in the IRD proceeding that rates and charges for new COMMSTAR Features comply with Commission-adopted principles for unbundling, imputation, nondiscriminatory access, and MBBs, as set forth in D.89-10-031, and that if the Commission establishes different rules for unbundling, etc. in IRD, Pacific shall modify its rates for COMMSTAR services as part of that proceeding.

53. The agreement contains ample safeguards to insure that price floors will be observed, and that any proposed changes will protect those floors. Neither MCI or monopoly ratepayers will be harmed by our granting interim authority in this decision to provide the proposed COMMSTAR services, with pricing flexibility, until the unbundling, etc. issues are resolved in the IRD proceeding.

54. Pacific has requested Category II classification with pricing flexibility for all CLASS features except Caller ID and Call Trace. GTE and Contel have requested Category II classification with pricing flexibility for all proposed CLASS features, except that GTE has amended its original position and indicated that Call Trace could be placed in Category I.

55. GTE proposes to assess a charge for uncompleted calls in connection with Special Call Acceptance; such a charge would not be appropriate.

56. A charge of $2.50 for GTE's service of Special Call Acceptance will cover its floor price when GTE does not charge for uncompleted calls.

57. The charge of $40 assessed by Contel for service connection includes the cost of processing requests for CLASS features, and covers Contel's direct-embedded costs.

58. SS7 costs have been incurred by applicants with the intent to benefit the present and future basic rate infrastructure, as well as to enable the deployment of present and future CLASS-type infrastructure requiring the use of SS7. As such, the cost of SS7 is not directly attributable only to present CLASS features.

59. The direct-embedded cost methodology for calculating SS7 costs, and the cost allocation methodology utilized by applicants is appropriate for purposes of this proceeding.

60. Pacific recommends a tracking procedure in connection with the provision of CLASS services requiring the following:

> a. Total CLASS-flexible pricing revenues and unit sales volume results on a semi-annual basis;
>
> b. Unit costs to be provided annually, and include recurring and nonrecurring costs, plus a description of extraordinary marketing and advertising costs; and
>
> c. The number of informal complaints received, if any, for CLASS features on a semi-annual basis.

61. The tracking procedure recommended by Pacific will provide data adequate to insure that the demand and cost estimates used by applicants in formulating their cost and

price levels for CLASS are realistic, and protect floor prices applicable in connection with each CLASS feature.

Conclusions of Law

1. Subject to the requirements of this decision, the applicants should be authorized to provide the CLASS features as requested and described in the applications.

2. The floor, initial, and ceiling rates proposed by applicants for the existing and proposed CLASS features are reasonable for the present, and should be authorized, with pricing flexibility, on an interim basis. Final rates for these features should be determined based upon the guidelines adopted in IRD relating to unbundling, nondiscriminatory access, imputation, and the definition of MBBs, as well as how to impute tariffed rates of MBBs into tariffed CLASS features.

3. Article I, Section 1, of the California Constitution explicitly establishes the right of privacy as an inalienable right of all people.

4. The authorities which speak most forcefully on the issues of privacy are directed at disciplining forces of government (especially the police) and protecting the rights of citizens to engage freely in "political speech."

5. The issues posed by balancing privacy interests of private parties who initiate or receive residential telephone calls arise beyond the clear concern of privacy as a "constitutional right."

6. California case law upholds the need to restrain the information activities of government with respect to those

items of personal information wherein the citizen has a "reasonable expectation of privacy."

7. While some have urged that Caller ID implicates a constitutional right to remain anonymous, the authorities they cite refer to a right to engage in political speech free of any government imposed condition that the speaker provide his/her name, address, or other identification.

8. Freedom of speech encompasses more than the right to be protected from censorship of content. It extends to communication in its most fundamental sense embracing both the right to disseminate information and the right to receive it.

9. Improper restraints on communications are offensive because they restrict the dissemination of ideas upon which a free society is ultimately dependent.

10. Because the right of the freedom of speech is intended to protect minority views, anonymity may be an indispensable prerequisite to speech.

11. The explicit right to privacy established by Article I Section 1 of the California Constitution is broader in scope than the corresponding federal right; therefore, if Caller ID can be offered without contravening the state constitutional privacy right, it does not violate federal privacy restrictions.

12. While California's privacy protections are most intensely engaged when the threat is one of governmental gathering or compilation of information in which citizens have a reasonable expectation of privacy, or when there are state sponsored or sanctioned inhibitions on freedom to engage in political speech, the "reasonable expectation of privacy" test advanced by the court may embrace a state of

mind fostered by technological conventions. Such as the case with Caller ID.

13. PU Code § 2893, which requires that we assure ourselves "that every telephone call identification service offered in this state by a telephone corporation . . . shall allow a caller to withhold display of the caller's telephone number, on an individual basis, from the telephone instrument of the individual receiving the telephone call placed by the caller," may be interpreted as requiring the provision of per-call blocking; however the statute fails to specify any particular blocking option, and the therefore is interpreted as requiring per-call blocking as the minimum privacy protection for the calling party's number.

14. Pursuant to PU Code § 2893, this Commission may require more restrictive blocking options to protect privacy, in place of, or in addition to, per-call blocking.

15. Article I, Section 1, of the State Constitution and PU Code § 2893 require that all telephone subscribers be given the capability of blocking display of the calling party's number, and therefore require adoption of a default blocking option.

16. The provision of the initial blocking selection and one change free of charge exceeds the requirement set for the in PU Code § 2893(b), which provides that "[t]here shall be no charge to the caller who requests that his or her telephone number be withheld from the recipient of any call placed by the caller."

17. In view of the manner in which we are authorizing Caller ID service, there is no violation of California penal

statutes prohibiting the wiretapping, interception, eavesdropping on and recordation of confidential communications over the telephone.

18. Applicants' requests to provide Caller ID service should be granted on an interim basis, subject to the consumer safeguards and other requirements contained in this decision.

19. Pacific and Contel should be authorized to provide Call Trace service at a charge of $5 per activation, subject to a price cap equal to the charge for two activations from the same number in a billing period, and to a cap equal to the charge for five activations from all numbers in the same billing period. GTE should be authorized to provide Call Trace service at a charge of $5 per month. Applicants should provide customers notice and education regarding Call Trace consisting at least of bill insert information concerning the availability and applicability of the service. A copy of the proposed bill inserts and any additional materials should be furnished to and approved by the Commission's Public Advisor.

20. In connection with the service of Call Return, applicants should be required to withhold delivery of the original calling number from the monthly billing statements of subscribers to the service.

21. GTE should not be authorized to assess a charge for uncompleted calls in connection with Special Call Acceptance. GTE should be authorized to assess a charge of $2.50 for this service.

22. The service connection charge of $40 proposed by Contel should be approved on the basis of it's including the provisions of CLASS features.

23. The direct-embedded cost methodology for calculating SS7 costs, and the cost allocation methodology therefor utilized by the applicants should be approved.

24. The tracking procedure outlined in this decision should be approved for monitoring the CLASS services authorized pursuant to this decision. Applicants' first reports should be filed one year after commencement of the services.

25. The Motion of Pacific to strike portions of the DRA opening and closing briefs should be granted.

26. MCI's Motion Requesting Declaratory Ruling or Other Relief should be denied.

27. TURN's Motion for Official Notice of Recent Decisions of Other Commissions Regarding Caller ID and Pacific's related motion should be denied.

28. TURN's Motion for Sanctions should be denied.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Bell (Pacific), GTE California Incorporated (GTE), and Contel of California, Inc. (Contel) are authorized to provide the existing and proposed nonprivacy-related Custom Local Access Signaling Services (CLASS) features identified in the applications, on five days' notice; except that for a limited two-year trial period, Pacific, GTE, and Contel are authorized to provide privacy-related CLASS services (Call Return, Call Block, Call Trace, and Caller ID) on an interim basis, subject to the protections specified in this order for such privacy-related services. Pacific is authorized to provide

existing COMMSTAR services in accordance with the terms and conditions of this decision.

a. Tariffs implementing Call Trace shall not become effective until applicants have provided customers notice and education concerning the service, and shall be filed in accordance with the rates and conditions set forth in Conclusion of Law 19.

b. GTE is authorized to file rates for Special Call Acceptance in accordance with Conclusion of Law 21.

c. Applicants may file tariffs for the remaining services as set forth in the proposed tariffs in their respective applications.

2. Prior to offering Call Return, Call Block, Call Trace, and Caller ID service, applicants shall provide each telephone subscriber with a clear and easily understandable notice informing the subscriber (1) of the blocking option applicable to that party's telephone service, (2) whether that option was determined by choice or by default, (3) of the right of the subscriber to change the blocking option applicable to that subscriber's service one time free of charge, and (4) of the nature of the available blocking options to which the subscriber might wish to change.

3. Prior to offering Call Return, Call Block, Call Trace, and Caller ID service, the applicants shall ensure that there is a simple means of identifying the nature of the blocking option applicable to a particular telephone and that the public is fully informed of this means. The applicants should attempt to agree on the best means from the consumer's perspective, taking into account simplicity and reliability, and should attempt universal deployment of that means and a wide-ranging effort to publicize it. Information regarding the

means of identifying the blocking option applicable to a particular telephone shall be included in the customer notification and education program.

4. Prior to offering Call Return, Call Block, Call Trace, and Caller ID service, the applicants shall widely publicize the fact that coin phones and certain other configurations, at least for the present, will not be capable of utilizing blocking, and shall undertake to ensure that all coin phones under their control have affixed to them a notice informing the user that blocking of the calling parties' number is not currently possible from that phone.

5. Each of the blocking options shall be provided free of charge to the subscriber for the initial selection (whether by affirmative choice or by default) and for one additional change of blocking option, and the applicants shall take steps to assure that any such change order is processed and effected expeditiously.

6. Call Return, Call Block, Call Trace, and Caller ID service shall not be provided until the applicants have filed (and served) revised customer notification and education plan(s) to be reviewed by the Commission Advisory and Compliance Division (CACD) (in consultation with the Public Advisor and, if necessary, an independent consultant chosen by CACD and paid for by applicants), and such plan(s) shall not be implemented until approved by the Commission. Subsequently, such privacy-related CLASS services shall not be provided until the applicants have made a showing in this proceeding, approved by Commission order, indicating compliance with the adopted customer notification and education requirements. An appropriate customer notification and education plan for the following CLASS services (Caller ID, Call

Block, Call Trace, and Call Return) must conform to the following requirements:

a. Complete information shall be provided to all California ratepayers, not simply those in areas where the service is currently offered.

b. Additional efforts shall be made in the new areas where the services will be offered, as they are added by the local exchange carriers.

c. The consumer education campaign shall be most intensive in the first six months and then ongoing for as long as the services are being offered.

d. All utility consumer education efforts shall use the same terminology and be as similar as possible.

e. Customer messages ordered by this decision shall not be sales messages. They shall provide objective, neutral information on both the services themselves and how consumers can make informed choices about these changes.

f. Written messages shall state that they are provided by the local exchange carrier as required by the Commission.

g. The messages shall be provided in many languages, so as to reach all Californians. The media used in the plan shall include, but not be limited to, the following: bill inserts, white pages information, brochures, sales representative scripts, and paid advertising.

h. The plan shall make extra efforts to reach groups with special needs (such as seniors, children, the limited English speaking, the disabled, those with nonpublished numbers).

i. The utilities shall establish a 24-hour toll free number for consumers to get information about the services and how they are used.

j. The messages shall tell consumers whom to contact if they have complaints about the way the service is being implemented (first the local exchange carrier, then the Commission's Consumer Affairs Branch.

k. Ordering per-line blocking or per-line blocking with per-call enabling shall be as simple as possible. A request form shall be included with the information/education material.

l. The codes used for per-call blocking shall be distinctly different than those for per-call enabling.

m. The local telephone companies offering any services shall provide the following information to the Commission Advisory and Compliance Division in a periodic compliance report to be filed with the Director of the CACD every six months after the services are offered:

(1) Number of subscribers to each CLASS service.

(2) Number of subscribers choosing per-call blocking.

(3) Number of subscribers choosing per-line blocking.

(4) Number of subscribers choosing per-line blocking with per-call enabling.

(5) Number of subscribers assigned default per-line blocking with per-call enabling.

(6) Number of subscribers assigned default per-call blocking.

(7) Number of subscribers ordering a change from initial blocking option, broken down by option changed from and option changed to.

(8) Number of subscribers with unlisted and unpublished numbers with a breakdown of those subscribers by choice of blocking option.

(9) Number of subscribers with unlisted and unpublished numbers assigned default per-line blocking with per-call enabling.

(10) Number and nature of complaints concerning the service.

n. Within 18 months of the date that the local telephone companies first provide the service, they shall serve and file with the Docket Office the interim compliance report required by this decision. This report shall address in detail (1) the level of usage of the services, (2) the effectiveness of the privacy protections and education programs implemented under this decision, (3) the nature of the public response to the provision of the services, (4) whether there have been new developments which militate in favor of discontinuance or alteration of the services, and (5) any other matter relating to the services which the applicant desires to call to the Commission's attention. A copy of that report shall be served on all parties to this proceeding. Parties shall have 30 days in which to file responses.

o. Consistent with PU Code § 2893(c)(1), the companies shall not offer the services until more than 30 days after they have notified their customers of the nature of the services they propose to provide.

p. Consistent with the spirit of PU Code § 2893(d)(4), the companies' education efforts shall include information to the effect that under their current terms of service, telephone users may be communicating their calling party number to private businesses every time they call an 800 or 900 number through a service known as Automatic Number Identification (ANI), that there is at present no capability to block the communication of their calling party number through ANI, that many businesses receiving ANI have the software capability to call up on-screen database information about the calling party at the time of the telephone call, and that these facts have not been well publicized.

q. The messages shall make consumers aware of the effectiveness of all blocking options when making interstate calls.

r. In their tariff filings, the applicants shall include a definition of "emergency service organizations" entitled to default protection of per-line blocking with per-call enabling.

7. In developing the customer notification and education plan, the applicants shall consult extensively with community and consumer leaders; applicants shall hold workshop(s) which will be open to all those interested, to review and comment on the plan prior to filing; we expect that applicants will modify their draft to reflect comments received, prior to filing. The plan shall not be implemented until approved by the Commission.

8. Call Return, Call Block, Call Trace, and Caller ID service shall not be provided by an applicant until the applicant has made a showing, approved by the Commission, that the applicant has notified all of its customers of the nature of

the service and the means by which they can protect their privacy, consistent with the provisions of this order.

9. Applicants shall contract with a reputable independent public opinion survey company free of conflict of interest to monitor the ongoing level of consumer awareness and understanding that has been attained during the period extending from the date of this decision to the date of expiration of the two-year trial period established herein.

10. Should we find that the utilities' implementation proves to be inadequate for any reason, we may supplement the customer notification and education plans with the program administered by the Commission Advisory and Compliance Division (CACD).

11. We direct CACD to closely monitor any complaints of "redlining" or unlawful discrimination through the use of Caller ID service, and to bring the problem to our attention along with recommendations as to how any such practices can be eliminated or controlled as necessary.

12. Call Trace shall be the subject of bill insert information and instruction to consumers.

13. GTE shall not offer Call Return until it has made the modifications to its hardware and software systems, including its billing system, necessary to suppress the calling parties' billing number on Call Return calls.

14. The privacy-related CLASS features other than Caller ID are authorized subject to the limitation that calling party numbers not be delivered or announced to call recipients.

15. Final rates for the existing and proposed features identified and authorized in this decision will be established

based upon the determinations made in the Implementation Rate Design (IRD) phase of the Commission's Alternative Regulatory Framework proceeding, (I.) Investigation 87-10-033, regarding unbundling, imputation, nondiscriminatory access, and monopoly building blocks (MBBs).

16. Within 90 days after issuance of the decision in the IRD phase of the Commission's Alternative Regulatory Framework proceeding, I.87-10-033, regarding unbundling, imputation, nondiscriminatory access, and MBBs, Pacific, GTE, and Contel shall file advice letters, with appropriate rates, for the services authorized by this decision.

17. The Motion of Pacific to strike portions of the opening and closing briefs of the Division of Ratepayer Advocates is granted.

18. The Motion of MCI Requesting Declaratory Ruling or Other Relief is denied.

19. The Motion of Toward Utility Rate Normalization requesting notice of recent decisions of other Commissions relating to Caller ID and Pacific's related motion, are denied.

20. The first tracking report, as described in Finding of Fact 72, shall be submitted to the Commission 6 months after commencement of the proposed services.

21. The applications are granted, in part, and denied, in part, as set forth above.

This order is effective today.

Dated June 17, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

I will file a written concurring opinion.
/s/ JOHN B. OHANIAN
Commissioner

I will file a written concurring opinion.
/s/ NORMAN D. SHUMWAY
Commissioner

* * *

Norman D. Shumway, Commissioner, concurring:

[22] I concur in part with the result reached by the Commission in this case. I believe that it properly permits an offering of CLASS services consistent with the public interest and adopts sufficient safeguards to assure that the privacy rights of California citizens will not be infringed. I write separately, however, to express my view that we need not pronounce limitations or adopt a narrowing construction of Article I, § 1, of the California Constitution in order to reach the result we do in this case.

In this decision my colleagues conclude that "California's privacy protections are most intensely engaged when the threat is one of governmental gathering or compilation of information which our citizens reasonably expect to hold within a realm of personal privacy, or when there are state sponsored or sanctioned inhibitions on freedom to engage in

political speech." Mimeo op., at 33-34 (footnote omitted); *see also id.*, at 25, 28, 31. This emphasis, suggesting a distinction between violations of privacy by the government and violations by private parties, in my opinion, is misplaced.

In *White v. Davis* (1975) 13 Cal.3d 757, 774-75, the California Supreme Court made clear that the state constitutional right of privacy was enacted to restrain the information-gathering activities of "government *and business*." The decisions of the California Court of Appeal have consistently read *White* as establishing that nongovernmental parties may be found to violate the constitutional right of privacy. *Park Redlands Covenant Control Committee v. Simon* (1986) 181 Cal.App.3d 87, 98 ("[T]here is both Supreme Court and appellate authority to the effect that state action is not required to create a violation of the California Constitutional right of privacy."); *Luck v. Southern Pacific Transp. Co.* (1990) 218 Cal.App.3d 1, 19; *Semore v. Pool* (1990) 217 Cal.App.3d 1087, 1094; *Wilkinson v. Times Mirror Corp.* (1989) 215 Cal.App.3d 1034, 1040.

In addition, many appellate decisions have found violation of the state constitutional right of privacy by private parties, including individuals, to be an actionable tort. In *Porten v. University of San Francisco* (1976) 64 Cal.App.3d 825, for example, the court stated:

> The constitutional right of privacy is self-executing; hence, it confers a judicial right of action on all Californians. . . . Privacy is protected not merely against state action; it is considered an inalienable right *which may not be violated by anyone.*

Id., at 829-30 (emphasis added); *accord, Luck, supra*, 218 Cal.App.3d at 19; *Semore v. Pool, supra*, 217 Cal.App.3d at

1094; *Wilkinson v. Times Mirror Corp., supra,* 215 Cal.App.3d at 1042-43; *Cutter v. Brownridge* (1986) 183 Cal.App.3d 836, 842; *Park Redlands, supra,* 181 Cal.App.3d at 98; *Laguna Publishing Co. v. Golden Rain Foundation* (1982) 131 Cal.App.3d 816, 851; *Kinsey v. Macur* (1980) 107 Cal.App.3d 265, 272; *see also Chico Fem. Women's Health Center v. Butte Glenn Med. Society* (E.D.Cal. 1983) 557 F.Supp. 1190, 1201-03.

While these decisions have been rendered by the Court of Appeal, the Supreme Court has not elected to order any of them depublished pursuant to Rules of Court 976 and 979. In fact it has ratified several of them, at least to the extent of citing them for other propositions. *See, e.g., Tavernetti v. Superior Court* (1978) 22 Cal.3d 187, 195 (involving the interception of a telephone communication by a telephone company linesman), which cites *Porten* with approval.

True, in *Schmidt v. Superior Court* (1989) 48 Cal.3d 370, 389, fn. 14, our Supreme Court, citing *Porten*, stated that it had "no occasion in this case to consider under what circumstances, if any, purely private action by a property owner or landlord would constitute a violation of the state constitutional privacy provision." But as two subsequent Court of Appeal decisions found after exhaustively discussing the *Schmidt* footnote, the availability of redress for nongovernmental violations of the constitutional right of privacy is the law of California. *Semore v. Pool, supra,* 217 Cal.App.3d at 1084, *quoting Wilkinson v. Times Mirror Corp., supra,* 215 Cal.App.3d at 1043 ("[T]he courts [are] unanimous in holding that the state constitutional privacy provision provides some protection against nongovernmental intrusion."); *Luck, supra,* 218 Cal.App.3d at 19 ("*Schmidt* provides us too slim a basis

to ignore the accepted principle of existing law that the right to privacy limits private as well as state action.").

Objectively, the decision's distinction between governmental and nongovernmental intrusions on privacy is dictum; here, as in *Schmidt*, state action is present. *See, e.g.*, *Huntley v. Public Utilities Com.* (1968) 69 Cal.2d 67, 76, holding that a PUC tariff requiring speaker identification as a condition of communicating over the telephone (albeit by recorded message) violates the First Amendment. In *Huntley* the Court Said:

> [T]he telephone company is a public utility subject to the control of the commission, a state agency. The proposed tariff is efficacious *only* because of state action. Constitutional scrutiny of state action is not predicated upon finding a direct restriction, there only need be a causative relation between the state action and the obnoxious result.

Id. (emphasis in original; citations omitted). But the presence of state action here is merely an additional reason why I would not reach out to make such a distinction.

Moreover, I do not find it necessary to posit a distinction between "political" speech and other speech for purposes of constitutional analysis. While it is true that the recorded message in *Huntley* was political in nature, I do not read the Court's opinion as suggesting that any greater protection applies to political speech than other speech. The First Amendment protects the communication of information and ideas, whatever their content, and First Amendment problems arise when a speaker is compelled to identify himself, thus discouraging such communication. *Huntley, supra*, 69 Cal.2d at 72, 74. With extremely limited exceptions, such a content-

based distinction is inimical to the fundamental application of the First Amendment.

The PUC tariff in *Huntley* was found to be impermissibly overbroad because its restriction on speech was not limited to evils such as obscenity, fraud, false advertising and libel. *Id.*, at 74. *Huntley* thus suggests that the tariff's effect of inhibiting all other types of recorded telephone messages violates the First Amendment. *Id.* As noted in *Huntley*, 69 Cal.2d at 74, quoting *Talley v. California* (1960) 362 U.S. 60, 64, "[t]here can be no doubt that such an identification requirement would tend to restrict freedom to *distribute information* and thereby freedom of expression." (Emphasis added.) *See also White v. Davis, supra*, 13 Cal.3d at 765-73 (finding a First Amendment violation in government surveillance which would chill "the free expression of ideas" on a college campus).

In my view, *Huntley* is on all fours with the instant case: a PUC-approved tariff offering Caller ID service without the blocking requirements and other safeguards we announce today would be just as violative of the First Amendment (and the expanded protections of the state constitutional right of privacy[1]) as the PUC-approved tariff overturned in Huntley. That is so because a calling party number disclosure requirement would deter individuals desiring to maintain the privacy of their telephone numbers from freely communicating information or ideas over the telephone.

It is worth noting that in *Canon v. Justice Court* (1964) 61 Cal.2d 446, the Supreme Court upheld a statute (Elec. Code, § 12047) prohibiting anonymous campaign publications. The Court found that the statute's purposes in requiring speaker identification – facilitating the electorate's evaluation

of the material by identifying its source, deterring irresponsible political attacks and enhancing a candidate's opportunity to rebut charges, thereby preserving the integrity of elections – outweighed the statute's inhibitory effect on free speech. *Id.*, at 452-54. Hence, the Court has upheld a speaker identification requirement which it found to limit political speech.

Indeed, even if the decision's political speech distinction were appropriate for purposes of First Amendment analysis, callers whose telephone numbers would be subject to compelled disclosure under unrestricted Caller ID would unquestionably be engaging in such speech on some occasions. Again, I do not find it necessary or appropriate to reach this point in the Commission's analysis of the right of privacy under Article I, § 1, of the California Constitution.

Finally, I do not find it necessary to raise the question of whether telephone callers have a "reasonable expectation of privacy" in the numbers from which they are calling. While that test may be appropriate for privacy analysis in an unlawful search and seizure context, *see People v. Crowson* (1983) 33 Cal.3d 623, 629, it is apparently not the relevant test where, as in *White v. Davis, Huntley* and the instant case, "First Amendment as well as right to privacy principles" are implicated, 33 Cal.3d at 629, fn. 5. In such circumstances, the test is more absolute and less subjective: it precludes any incursion into fundamental rights which is not narrowly tailored to serve a compelling state interest. *White v. Davis, supra,* 13 Cal.3d at 772, 775; *Huntley, supra,* 69 Cal.2d at 78-79. "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. . . . [F]undamental rights may not be submitted to

vote; they depend on the outcome of no elections." *West Virginia Board of Education v. Barnette* (1943) 319 U.S. 624, 638. "Whatever role the subjective expectation of privacy may play in determining the extent of a constitutional right, ' . . . the state cannot curtail a person's right to privacy by announcing and carrying out a system of surveillance which diminishes that person's expectations.' " *People v. Chapman* (1984) 36 Cal.3d 98, 113, *quoting DeLancie v. Superior Court* (1982) 31 Cal.3d 865, 875, fn. 11.

[23] I also respectfully dissent from the decision's authorization of the CLASS feature known as Anonymous Call Rejection or "Block the Blocker." First, I consider the approval of this feature inappropriate because none of the applicants requested authority to offer it. Thus the issue is not properly before us.

Second, on the scant record available to us, I do not believe that the feature serves the public interest. Anonymous Call Rejection would allow a subscriber to tell the telephone company that he or she does not wish to receive calls from any caller who blocks the delivery of the calling party's number. Where a blocked call is placed to the Anonymous Call Rejection subscriber, the subscriber's telephone does not ring. Instead, the call is mechanically intercepted at the central office, where a recording informs the caller that the party he is calling does not wish to receive calls from anyone blocking his number, but if the caller wishes to unblock by pressing the appropriate code, the call will go through to the called party, who may or may not answer.

Anonymous Call Rejection could greatly inconvenience subscribers who happen to have "firm" per-line blocking and cannot enable calling number disclosure, those who have

unlisted or nonpublished numbers (which according to some studies exceed fifty per cent of subscribers in many metropolitan areas) and those who simply would prefer not to disclose their numbers as a condition of having the telephone of the party they are calling ring. Such subscribers should not be put to the inconvenience of having to seek out a public or other telephone in order to attempt to preserve their privacy and complete the call. In my opinion, there are many circumstances in which such inconvenience might rise to the level of intrusion on the rights of free speech and privacy. Indeed, as in *Huntley* and *Talley*, and to some extent *White v. Davis*, the compulsion to disclose private information as a condition of speaking may cause the caller to elect not to speak at all. Imagine, for example, the situation in which a caller with an unlisted telephone number legitimately desires to communicate important information and ideas over the telephone to an Anonymous Call Rejection subscriber. The caller is left with the Hobson's Choice of surrendering his heightened privacy in the unlisted number he has purchased or electing not to complete the call, thereby surrendering his right of free expression. Imagine, also, the situation in which a person attempts to make an emergency call to an Anonymous Call Rejection subscriber from a line-blocked telephone. The caller may be left with the alternative of running to the corner grocery store to find a telephone to deal with the emergency.

Without further consideration of all its ramifications, I do not believe that the telephone company should offer a service which intercepts phone calls before they reach the called customer's premises unless the caller relinquishes his right of privacy, even on instructions of the call recipient. I have misgivings about authorizing a service which conditions the caller's desire to have his call go through to the called party's

premises upon the surrender of fundamental rights. Anonymous Call Rejection seeks to facilitate call screening on the basis that there is something inherently wrong with a caller's exercising his right of privacy and blocking delivery of his number. We should exercise great care – more than was appropriate in this case where the service was not requested – before giving credence to this inference.

Finally, by authorizing CLASS services such as Caller ID, Call Block and Priority Ringing, as we do today, we grant call recipients significant added ability to protect their privacy from intrusion by unwanted telephone calls. Subscribers to Caller ID need never answer blocked calls; the subscriber may merely observe on the Caller ID display unit that the calling party's number is blocked and choose not to pick up the receiver.

I believe that the record before us is inadequate to facilitate the full airing of the implications of Anonymous Call Rejection. I therefore dissent from our authorizing the Anonymous Call Rejection feature at this time.

Despite these concerns, I believe that the Commission's decision authorizing CLASS services with safeguards is consistent with the public interest and the privacy requirements established by the California Constitution. I therefore concur in the result reached in the majority opinion.

/s/ NORMAN D. SHUMWAY
June 17, 1992

San Francisco, California

FOOTNOTES

Interim Opinion

[1] We note that each of the applicants has utilized distinctive product names, some of which are asserted to be protectable service marks, in packaging their CLASS services. In our view, it would be extremely helpful to consumers if the applicants could agree among themselves on a single and fairly descriptive name for corresponding offerings to be provided across the state. We encourage the applicants to do so.

[2] The proposed decision, issued on January 21, 1992, found that Caller ID, even with a choice of all available blocking options, would constitute an unwarranted intrusion on the state and federal privacy rights of California citizens and would not be in the public interest because the detriments associated with the feature would outweigh its benefits. Pursuant to Rule 77 et seq., the following parties filed comments and replies to the proposed decision: applicants, AT&T, Consumer Action, California Alliance Against Domestic Violence, California Department of Consumer Affairs, California Bankers Clearing House Association, the Division of Ratepayer Advocates, Roseville Telephone Company, the smaller independent LECs, MCI, TURN, and UCAN. These comments have been considered in our decisionmaking process.

[3] As noted by the ALJ, Caller ID is actually a misnomer. The feature is a calling "number" identification service and does not disclose the identity of the individual making the call.

[4] The per-call blocking code for rotary telephones would be 1167.

[5] As will be discussed more fully below, some of the parties contend that other, more restrictive options for protecting calling party privacy, such a per-line blocking or per-line blocking with per-call enabling, should be required.

[6] Currently, the Digital Multi-Plex System 100 switch is unable to provide per-call blocking to coin phones.

[7] The person receiving a telephone call has an interest in not being imposed upon by those with whom he or she chooses not to associate. *See, e.g., Rowan v. Post Office Department* (1970) 397 U.S. 728, 736-37; and *Martin v. Struthers* (1943) 319 U.S. 141, 148. This interest is not insubstantial. In a very real sense, the called party's zone of privacy (and ability to control the peaceful enjoyment of his or her surroundings) is

intruded upon whenever a calling party demands his or her attention in response to the ring of the telephone.

[8] *See, e.g., Rowan v. Post Office Department, supra,* 397 U.S. at 736-37; and *Martin v. Struthers, supra,* 319 U.S. at 148.

[9] The legislative findings underlying PU Code § 2893 – the California statute which address the issues surrounding the provision of calling number identification services such as Caller ID – support this view. The Preamble to that section, Stats. 1989, c. 483, § 1, provides:

> The Legislature finds and declares all of the following:
>
> (a) Telephone subscribers have a right to privacy, and the protection of this right to privacy is of paramount state concern.
>
> (b) To exercise their right to privacy, telephone subscribers must be able to limit the dissemination of their telephone number to persons of their choosing.

[10] It is worthy of note, however, that the *Chapman* court was expressing itself in the context of a criminal prosecution. The Court concluded that a defendant had a reasonable expectation of privacy in the unlisted information which the telephone company disclosed to the police, and that this right was protected under Art. I, § 13 of the California Constitution which shields residents from a search or seizure without prior judicial approval. (36 Cal.3d 98, 105-108.) Caller ID services in the hands of the general public pose a lesser threat to the constitutional restraints on unsanctioned searches and seizures by the police.

[11] The Davis court cited *Carter v. Com. on Qualifications* (1939) 14 Cal.2d 179 and other authorities for the proposition that it is legitimate to resort " . . . to election brochure arguments as an aid in construing legislative measures and constitutional amendments adopted pursuant to a vote of the people." 13 Cal.3d 757, 775, fn. 11.

[12] The *Blair* court cited with approval at 1975 decision of the District Court of Appeal which had held that an individual's right to privacy was violated when telephone company records of his outgoing calls were disclosed to police officials who had not obtained a warrant. *People v. McKunes* (date) 1975 51 Cal.App.3d. 487, 490-91. 25 Cal.3d at 653-54.

[13] The Court again took the opportunity to indicate that the protected right of privacy in California was more extensive than has been recognized as mandated by the United States Constitution. *United States v. Miller* (1976) 425 U.S. 435, and *Smith v. Maryland* (1979) 442 U.S. 735, were cited for the proposition that there is no expectation of privacy in bank records or the record of outgoing telephone calls. The rejected rationale of these federal decisions was that the user voluntarily conveys this information to a third party such as the bank or telephone company.

[14] 36 Cal.3d at 108, 110.

[15] Commissioner Shumway's concurring opinion apparently rejects our readings of *Talley* and *Huntley* as charting the dimension of a right to remain anonymous. Yet no authority is cited for a more broadly cast (reading) than the one we have identified. Indeed, an attempt to extend *Huntley* beyond the context of political speech can only be undertaken if one ignores the explicit limitation placed by the Court on the result it announced. We are content to rely upon the views of the California Supreme Court as expressed at 69 Cal. 2d at 72-73.

[16] Id. at 64-65.

[17] " . . . We conclude that [plaintiff] has not waived her right to sexual privacy.

"But even though plaintiff retains certain unwaived privacy rights, these rights are not necessarily absolute. On occasion her privacy interests may have to give way to her opponent's right to a fair trial. Thus courts must balance the right of civil litigants to discover relevant facts against the privacy interests of persons subject to discovery."

[18] Compare People v. Chapman, supra, 36 Cal.3d 98, *People v. Blair* (1979) 25 Cal.3d 640, *Burrows v. Superior Court* (1974) 13 Cal.3d 238, and *People v. McCunes* (1975) 51 Cal.App.3d 487, with *Smith v. Maryland* (1979) 442 U.S. 735, and *United States v. Miller* (1976) 425 U.S. 435.

[19] As Benjamin Cardozo noted, "The half truths of one generation tend in time to perpetuate themselves in law as the whole truths of another, when constant repetition brings it about that qualifications, once taken for granted, are disregarded or forgotten." *Allegheny College v. National Chautauqua County Bank of Jamestown* (1927) 246 N.Y. 369, 159 N.E. 173. Judge Cardozo was speaking of the common law contract doctrine of consideration. Yet his sentiment may be even more apt to

concepts as vital as privacy and the terms of an explicit social contract embodied in a written constitution.

Commissioner Shumway's concurring opinion expresses the view that "a distinction between violations of privacy by the government and violations by private parties . . . is misplaced." From our perspective, we have not created this distinction. The proposition that our Constitution seeks to limit the power of government is rooted in the most fundamental notions of ordered liberty. To suggest otherwise is to omit the literal language of the First Amendment. Private wrongs are the object of civil litigation. To remove from context and extend on the wings of speculation the language of constitutional precedent is, to our minds, an assumption on the part of the Commission of " . . . the judicial power to determine the constitutional rights of California citizens." Such a right was emphatically denied by our Supreme Court in *People v. Chapman* (1984) 36 Cal.3d 98, 111, fn. 9. We have examined *Chapman* as well as the content of Section 1760 of the Public Utilities Code enacted some 33 years prior to the Court's remark. We have concluded that our deliberations will, from time to time, engage issues of constitutional interpretation. In such circumstances we are to seek guidance from the pronouncements of the Court with the knowledge that should we err, the Court will exert appropriate correction. See also, *Pacific Tel. & Tel. Co. v. Public Util. Com.* 62 Cal.2d 634, 646 (1965).

[20] In some jurisdictions, the use of the *67 code for per-line blocking with per-call enabling has created confusion because it is the same code as that used for per-call blocking. We understand that the technological capability of using a per-call enabling code other than *67 is or soon will be available. When we refer to per-line blocking with per-call enabling, we mean per-call enabling which utilizes an enabling code other than *67.

[21] We recognize that at present, GTE does not have the capability of providing per-line blocking without per-call enabling. We are troubled that GTE did not plan its network development to ensure the existence of a switching capability to provide such blocking. If GTE is to provide these services, it should develop a per-line blocking capability at the earliest opportunity. However, if it meets all other requirements for offering CLASS services, it may offer the services temporarily substituting per-line blocking with per-call enabling for those customers who choose per-line blocking. GTE shall include progress reports on this point in its periodic tracking reports.

[22] In other contexts, the Commission, in collaboration with the Legislature, has taken steps to assure that intrusion into the privacy of telephone communications can result only where all parties to the call have consented. E.g., PU Code § 7906; General Order No. 107-B; *Air Transport Ass'n v. Pub. Util. Comm'n* (9th Cir. 1987) 833 F.2d 200, cert. denied (1988) 487 U.S. 1236; *Re Monitoring of Telephone Conversations* (1983) 11 Cal.P.U.C.2d 692, *reh'g denied* (1983) 13 Cal.P.U.C.2d 47; D.88232 (1977) 83 Cal.P.U.C. 149; D.73146 (1967) 67 Cal.P.U.C. 528; D.69447, (1965) 64 Cal.P.U.C. 526.

[23] Unlisted numbers are those telephone numbers available only through directory assistance but do not appear in the white section of the telephone directory or street address directory. See, for example, Pacific Bell Schedule Cal.P.U.C. No. A5.7.1.B.1.

[24] Nonpublished telephone numbers are not listed in any telephone directory, street address directory, or in the directory assistance records available to the general public. See, for example, Pacific Bell Schedule Cal.P.U.C. No. A2.1.34.A.

[25] See discussion in "Deployment Limitations" above.

[26] By this reference, we mean both coin phones and other blocking-incompatible services or equipment owned by the applicants and those provided to customers pursuant to tariff. To the extent necessary, the applicants shall amend their tariffs to assure that this protection is provided.

[27] It is not our intention that there be a time limitation on a subscriber's one free *change* of blocking option, once the initial selection by choice or default has been made.

Norman D. Shumway, Commissioner,
Concurring

[1] *See, e.g., City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 130, fn. 3.

EXCERPT FROM REPLY OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION, EXHIBIT E (FILED AT FCC ON AUGUST 17, 1994)

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	CC Docket
	)	No. 91-281
Rules and Policies Regarding	)	
Calling Number Identification	)	
Service – Caller ID	)	
	)	

REPLY DECLARATION OF ERNEST S. TING

I ERNEST S. TING, declare:

I am employed by the California Public Utilities Commission ("CPUC") as the Manager of Telecommunications for the Commission's Strategic Planning Division ("SPD"). My business address is 505 Van Ness Avenue, San Francisco, California 94102.

In addition to my duties for the CPUC, I have in recent years served as a member of the Staff of the Section 410(b) Federal-State Joint Conference on Open Network Architecture. In connection with my responsibilities for both the CPUC and the Joint Conference, I have had occasion to review data indicating the volume of intrastate and interstate telephone traffic for carriers operating in California. Such information is routinely provided by such carriers both to the FCC and to the CPUC.

In an earlier declaration which I submitted in this proceeding in connection with the PETITION OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA FOR RECONSIDERATION AND CLARIFICATION AND COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING ("California's PFR") filed herein on or about May 18, 1994, I indicated that on a national basis approximately eighty-five to ninety per cent of the minutes of usage of the telephone network involves intrastate telephone communication and approximately ten to fifteen per cent of the minutes of usage involves interstate telephone communication. I concluded based on these data that roughly eighty-five to ninety per cent of the usage of the network involving Caller ID would be intrastate usage and roughly ten to fifteen per cent would be interstate usage.

In attempting to update and particularize for California carriers the information and conclusions contained in my earlier declaration, I have examined more recent data than I relied on in my earlier declaration. These data identify not just minutes of usage but the number of calls originated by the customers of California carriers. In examining these data, I have concluded that because the availability of Caller ID service assumes that CPN transmission or blocking occurs with every call, and occurs just once for each call, the number of calls, rather than the number of minutes of usage, is a better measure of the relative potential Caller ID traffic properly allocated to the intrastate jurisdiction and to the interstate jurisdiction. Moreover, since the caller's determination to block or disclose CPN is made at the originating end of a telephone call, data which include calls originating in California, rather than minutes of usage for interLATA calls counted

at both the originating and terminating ends, present a clearer picture of the relative proportion of intrastate and interstate traffic potentially applicable to California-regulated intrastate and FCC-regulated interstate Caller ID services.

I have reviewed date for three California carriers – Pacific Bell, GTE California Incorporated and Roseville Telephone Company. I obtained these data from the most recent (1993) annual reports submitted to the FCC and the CPUC by these companies. True copies of these data are attached hereto as Appendix A.

Using these data, I calculated the relative proportion of interstate and intrastate calls for each carrier applicable to potential Caller ID service originating in California by adding the local calls completed, the intraLATA toll calls completed and the interLATA intrastate toll calls completed (originating in California) for that carrier. I took this total as the total number of intrastate calls potentially applicable to Caller ID service for the carrier. I then compared this total with the total number of interLATA interstate toll calls originating in California for the carrier. Using that methodology, I computed the relative proportion of intrastate and interstate traffic for these carriers as follows:

Carrier	**Relative % Telephone Calls (1000s)**	
	Intrastate	**Interstate**
Pacific Bell	54,397,752 (92.38%)	4,489,740 (7.62%)
GTE California Inc.	12,398,803 (93.64%)	842,727 (6.36%)
Roseville Telephone Co.	314,961.34 (94.46%)	18,487.54 (5.54%)

Based on these calculations, I believe it is reasonable to conclude that Pacific Bell traffic potentially applicable to Caller ID services is more than 92% intrastate and less than than 8% interstate, GTE California traffic potentially applicable to Caller ID service is almost 94% intrastate and slightly more than 6% interstate, and Roseville traffic potentially applicable to Caller ID service is more than 94% intrastate and less than 6% interstate.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California, this 10th day of August, 1994.

/s/ Ernest S. Ting
ERNEST S. TING
Declarant

EXCERPT FROM EX PARTE LETTER FROM PACIFIC BELL TO FCC FILED AT FCC MARCH 27, 1995

Gina Harrison
Director
Federal Regulatory Relations

PACIFIC * TELESIS.
Group-Washington

1275 Pennsylvania Avenue N.W.
Suite 400
Washington D C 20004
(202) 383-6423

March 27, 1995

EX PARTE

William F. Caton
Acting Secretary
Federal Communications
Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Received
Apr. 05, 1995
LEGAL
DIVISION

Dear Mr. Caton:

Re: *CC Docket No. 91-281, Caller ID*

On Friday, March 24, 1995, Jo Ann Mataraci and Robert J. Mazique of Pacific Bell, and I met with James L. Casserly, Senior Legal Advisor to Commissioner Susan Ness; Courtney Bailey, an intern in the Office Commissioner Rachelle B. Chong; and Michael Katz, Chief Economist, Office of Plans and Police, to discuss issues outlined in Attachment 1 which was used during the presentation. We also gave Ms. Bailey copies of the documents contained in Attachment 2. Please

associate these materials with the above-referenced proceeding.

We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

/s/ Gina Harrison

Attachment

cc: James L. Casserly
Courtney Bailey
Michael Katz

Impacts of the Caller ID Order on the California Economy

PACIFIC BELL
A Pacific Telesis Company

Order Options	Implementation/Results	1st Yr. Expense*	Benefits/New Business Opportunities**
1. Modify original order to adopt a national model which allows per call & per line with the blocking default as per call	• Pacific Bell would educate Californians on blocking • Pacific would rollout Caller ID	$47M	• Customers/Businesses have requested: - The ability to identify who the customer is; (e.g., voter poling, geographic information for radio stations, PAY-PER-VIEW-TV, automobile clubs, fraud protection, law enforcement) - Wireless providers want CLASS - Productivity improvement - any company that has incoming calls for ordering (e.g., travel agent, bank, pizza delivery, catalogue shopping) - Retail sales (e.g., CPE and software)
2. Clarify original order to include intra and interstate calls (per call blocking only)	• Pacific Bell would educate Californians on blocking • Pacific would rollout Caller ID	$20M	
3. Defer to existing state regulations on blocking: order passage of CPN	• Forces Pacific to implement CPUC blocking and education requirements even if CPN is only passed interstate • California blocking rules make Caller ID unprofitable	$51M	• High % of line blocking would impact the success of any CPN based product or service • Likely that Caller ID will not be offered in California which means none of the above opportunities will come to fruition
4. Reconfirm original per call blocking order, clarify interstate only	• This forces California into a dual blocking situation for intra and interstate calls. • Extensive delay to implement dual blocking - 7 years • California blocking rules make Caller ID unprofitable	$186.4M	• It would be many years before businesses would be benefit from the passing of CPN, if ever • High % of line blocking would impact the success of any CPN based product or service • Likely that Caller ID will not be offered in California which means none of the above opportunities will come to fruition

* preliminary cost studies

** Since there is no Caller ID product in California it isn't possible for Pacific Bell to quantify the benefits to the economy. The information included here is based on specific requests from businesses across the state

CPN and Compensation

All Carriers recover SS7 network costs today.

- The Commission opined, in 1989, and reiterated in 1991, that the SS7 signaling network was a network upgrade, the costs of which would be recovered through network efficiencies and new interstate and intrastate services rather than through a separate rate structure. Accordingly, LEC tariffs offer either MF or SS7 signaling with FG D access at the same local switching and local transport rates. The CPN parameter itself is offered as a nonchargable option. (CC Docket 86-10, Report and Order, released April 21, 1989, para. 70 and MO&O, released September 4, 1991, para. 37).

  - Pacific believes there will no significant impact to our SS7 network that would cause us to reengineer as a result of passing CPN.

- Both LECs and IXCs recover the costs of their SS7 networks today through a combination of network efficiencies and tariffed rates for services such as FG D access, 800 and 900 services, ISDN, private virtual networks and other SS7-based services.

Switch work required to change the CPN status to pass is insignificant.

Not pass CPN	Pass CPN
AT&T no work required, switch default is not to pass CPN	**AT & T and Northern Telecom** In both switch types, each carrier common block must be changed from no to yes to pass CPN
Northern Telecom default is to pass CPN, requires that the option to pass CPN be set to no on a CIC basis in every switch	

Assumption: Switch activity required by a LEC to pass CPN or not pass is comparable to activity required for an IXC since SS7 protocol is standardized and all switch vendors comply with current requirements.

Costs to Pacific to enable blocking options

Additional work required to provide per call blocking only

- In all switch types, each carrier common block translations must be changed from no to yes to pass CPN
- Assign per call blocking code to individual private dialing plans
- 5ESS & DMS 100 - remove office privacy restrictions

Estimated cost: $1.8M

*67 is already in the switches, it was loaded & translated when other CLASS software was installed several years ago.

Additional switch work required to provide per call and per line blocking with *82 unblocking

- In all switch types, each carrier common block translations must be changed from no to yes to pass CPN
- Assign per call blocking code to individual private dialing plans
- 5ESS & DMS 100 - remove office privacy restrictions
- Perform translations work to turn on *82 capability in all switches

Estimated cost: $2.8M

*82 is technically available and installed in our 5ESS & DMS 100 switches, need to purchase for SSC at an estimated cost of $50,000.

This reflects switch work only. It does not include activities or costs for service order development, customer selection information or customer education. Those costs are included in 1st Yr. Expense on page 1.

Economic Impacts as a result of California passing CPN

- Since there is no Caller ID product in California it isn't possible for Pacific Bell to quantify the benefits to the economy. However, here is some data which identifies CPN's potential impact on the national and the state economy.

- California has the largest number of originating interstate calls at 5.4M. This is 2.4M more than the next largest state, New York.

National

- California originates 17% of the nations interLATA calls.
- 23% of the nations toll call volume (LATA, state and interstate) originates in California.
- 57% of California's originating interLATA toll calls are interstate.
- California's ethnic mix and close geographic proximity to Mexico, Central America and the Pacific Rim would suggest significant opportunity in the international markets;
  - 28% of California's population is Hispanic, nationally this number is 10%.
  - 11% of California's population is Asian, nationally this number is 3%.

California

- 70% of all toll calls (LATA and interLATA) originate in California, terminate in California. Nationally, only about 50% originate and terminate in the same state.
- Over one third (36%) of the national intraLATA call volume is in California.
- California has 32% of the nation's intrastate toll calling (intraLATA and interLATA).

ATTACHMENT 2

Mary L. Vanderpan
Regulatory Vice President

PACIFIC * BELL
A Pacific Telesis Company

140 New Montgomery, Room 1814
San Francisco, California 94105
(415)542-1268

June 3, 1994

Mr. Ken Henderson
Commission Advisory and Compliance Division
505 Van Ness Avenue, Third Floor
San Francisco, CA 94102

Dear Mr. Henderson:

Pacific is requesting an interpretation of the California Public Utility Commission's current orders to determine whether the blocking requirements for Caller Identification (Caller ID) apply to the passing of interLATA Calling Party Number (CPN).

Caller ID is a product that has been examined in many forums. The California Public Utilities Commission issued D.92-11-062 that set forth the blocking requirements and customer education necessary to deploy the caller ID service. The blocking requirements included both per call blocking and per line blocking. As you are aware, Pacific Bell has not deployed the Caller ID service.

Recently, the FCC issued a ruling in the Notice of Proposed rule making, CC Docket No. 91-281, which established the requirements for interstate Caller ID. It ruled that all SS7 capable companies must begin passing Calling Party Number (CPN), with per call blocking only, to InterExchange carriers starting April 12, 1995. In this rule making, the FCC made it clear that line blocking is not allowed on interstate calls.

When the CPUC order and FCC rule making are compared, it appears they may be in conflict regarding blocking requirements for Caller ID or the passing of CPN. However, Pacific would like to determine whether these orders conflict if Pacific does not deploy intrastate Caller ID, but begins to pass CPN as ordered by the FCC.

It appears that the current CPUC decisions may apply to the passing of CPN. If these CPUC decisions only apply to deployment of Caller ID services, and Pacific does not deploy Caller ID, then it would appear there would be no conflict. In that event, the blocking for that call would need to comply with FCC, not CPUC, requirements. In that case, Pacific will begin passing CPN to the InterExchange Carriers on April 12, 1995. However, if the current CPUC rulings apply to any passing of CPN, then even if Pacific does not deploy Caller ID, the CPUC and FCC rulings will conflict on blocking requirements for CPN.

In summary, Pacific would appreciate an interpretation of the CPUC's current orders to determine if there would be any violation of CPUC requirements if, on April 12, 1995, Pacific begins to pass CPN, with Per Call Blocking, to InterExchange Carriers. It is important to clarify this as quickly as possible in order to ensure any conflicts are addressed in time to meet the April 12, 1995, FCC date.

If you would like to discuss this, or have any questions about what we are requesting, please give me a call.

Sincerely,

/s/ Mary L. Vanderpan

cc: M. Fogelman
J. Leutza

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION (Seal)
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 14, 1994

Ms. Mary Vanderpan
Vice President
Pacific Bell
140 New Montgomery Street, Rm. 1814
SAN FRANCISCO CA 94105

Re: Caller ID and InterLATA CPN

Dear Ms. Vanderpan:

I am writing in response to your letter of June 3, 1994, concerning Caller ID service and the passage of CPN intrastate. I apologize for the delay in responding, but I was not aware of any particular urgency to the request.

You have asked for our interpretation of what a LEC's requirements would be concerning passage of CPN if the LEC is not offering intrastate Caller ID service but is required to provide CPN to IECs for interstate calls as ordered by the FCC.

The rationale of the commission's Caller ID decision clearly appears to require that a LEC assure the protection of the privacy of CPN for its customers' intrastate calls either (1) by not passing the CPN for intrastate calls to other California carriers that offer Caller ID service or (2) by providing its customers with the blocking options required by the Commission's decision for their intrastate calls. This would be true, whether or not the LEC offered Caller ID service. As you know, CPN blocking is initiated at the originating rather than the terminating end of the telephone call.

The Commission's decision, which concludes that Caller ID is in the public interest, also appears to contemplate a transition to a world in which Caller ID service is offered by all California carriers.

We believe that the rationale of the Commission's decision also requires customer notice where customer blocking options are provided.

We believe that it is feasible for California LECs employing SS7 switches to determine the jurisdictional nature of most calls by comparing the area codes of the calling and called numbers. We also believe that it has been shown in the FCC Caller ID proceeding that it is feasible to have different Caller ID blocking regimes for intrastate and interstate calls. Nevertheless, in the FCC proceeding, the Commission has not advocated the deployment of dual blocking regimes but has instead requested that the FCC, in clarifying its interstate Caller ID regime on reconsideration, simply defer to the intrastate blocking regime of the originating state, subject to minimum federal privacy standards.

I hope this answers your inquiry. If you have further questions on this matter, please direct them to Mark Fogelman of our Legal Division, (415) 703-1992.

Sincerely,

/s/ Kenneth K. Henderson
KENNETH K. HENDERSON
Director
Commission Advisory & Compliance Division

cc: Jack M. Leutza
M.J. Purcell
Mark Fogelman

EX PARTE LETTER FROM CPUC TO FCC AND APPENDIX A FILED AT FCC APRIL 26, 1995

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION (Seal)
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

April 25, 1995 **VIA FEDERAL EXPRESS**

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of Rules and Policies Regarding Calling Number Identification Service – Caller ID, CC Docket No. 91-281

Dear Mr. Caton:

In accordance with Section 1.1206(a)(1) of the Commission's Rules, the People of the State of California and the Public Utilities Commission of the state of California ("California" or "CPUC") hereby submit for filing two copies of this letter, along with the attached copy of their letter to Chairman Hundt, Commissioners and staff seeking thirty days to respond to the *ex parte* filings of Pacific Telesis and Pacific Bell dated February 14, 16, 17, 21, 24, 1995, March 7, 8, 24 and 27, 1995, and April 24, 1995.

A copy of this letter and the attached letter (with attachments) is being sent to each of the Commissioners and to all parties who received *ex parte* presentations from Pacific Telesis and

Pacific Bell as reflected in their above-referenced *ex parte* filings.

Please make this letter and the attachments hereto part of the record.

Sincerely,

/s/ Mark Fogelman
Mark Fogelman
Principal Counsel

Attachments

cc:

Chmn. Hundt	S. Tetrault	J. Keegan	M. Katz
Comr. Barrett	J. Casserly	C. Bailey	M. Specht
Comr. Quello	J. Coltharp	R. Welch	M. DeLuca
Comr. Chong	K. Levitz	M. Bertman	M. Gordon
Comr. Ness	A. Gomez	W. Kennard	K. Brinkman
K. Wallman	L. Dubroff	L. Belvin	

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION (Seal)
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

April 25, 1995 **VIA FEDERAL EXPRESS**

EX PARTE

Hon. Reed E. Hundt, Chairman,
Commissioners and Staff
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of Rules and Policies Regarding Calling Number Identification Service – Caller ID; CC Docket No. 91-281

Dear Chairman Hundt, Commissioners and Staff:

The People of the State of California and the Public Utilities Commission of the State of California (hereinafter collectively "California" or "CPUC") hereby request that they (and all parties herein) be given thirty days within which to respond to the *ex parte* filings of Pacific Telesis and Pacific Bell (hereinafter collectively "Pacific") dated February 14, 16, 17, 21, 24, 1995, March 7, 8, 24 and 27, 1995, and April 24, 1995, in the above matter. California only learned of and obtained copies of these voluminous filings which purport to provide new information in the past three weeks, and only yesterday received a copy of Pacific's April 24th filing, which indicates that Pacific has received and been given an opportunity to comment on information concerning the Commission's intended decision on reconsideration. If these proceedings are to be fundamentally fair, all parties must be

given the same information concerning the Commission's intended decision and the same opportunity to comment.

If California and other parties are not given a fair opportunity to respond to Pacific's filings, they will have been denied due process of law. Like many states and state commissions and unlike all of the major carriers, including Pacific, California does not have employees stationed in Washington, D.C., to review and evaluate filings and likely presentations made by carriers to the Commissioners, their Staffs and the Common Carrier Bureau. California is simply not in a position constantly to monitor the *ex parte* communications of the numerous carriers seeking to influence the Commission's determination in this case. Moreover, Pacific did not provide copies of its filings to California until April 5, 1995, when California demanded that it do so. The use of the Commission's procedures to favor certain parties over other parties is fundamentally unfair.

California believes that much of the information presented to the Commission by Pacific in its *ex parte* filings is inaccurate, incomplete or misleading. The Commission should not render a decision on reconsideration without allowing all parties an opportunity to correct the record.

Although California urges the Commission to grant all parties an additional thirty days within which to file final comments in this proceeding because it cannot respond fully without such additional time, it wishes to address briefly some of the points addressed in Pacific's filings.

Regarding California's default of per-line blocking with per-call enabling for subscribers with non-listed or non-published numbers who fail to choose a blocking option, California submits that such a default assignment of blocking option

should in no event be addressed, altered or pre-empted by the Commission's order on reconsideration. The non-published subscriber default, which California has found mandated by the privacy guarantee of Article I, § 1, of the California Constitution, is extremely important to the California's efforts to ensure that disclosure of CPN by California citizens is the result of informed consent.

California has the eleven metropolitan areas having the highest proportion of unlisted numbers in the country. *See* Appendix A hereto. These areas range from 68.8% of telephone users (Sacramento) to 60.4% (Ventura County). *Id.* Based on these figures, CPUC Staff estimates that there are approximately 7 million households in California with unlisted numbers. If a customer notification and education program were incredibly effective and reached 70% to 75% of these households, there would still be between one and two million households that pay charges each and every month for a private telephone number that would not receive notice. If the default for these unlisted subscribers who do not receive notice were changed to per-call blocking, the lack of actual notice would result in the disclosure of CPN on every call they make without their informed consent. These customers would likely include victims of spousal and child abuse, whose lives and safety could be at risk, elderly people and people with disabilities whose families had chosen the protection of an unlisted number for them, people who obtained unlisted numbers to avoid telephone harrassment, people who want to keep information about themselves from those who compile directories or databases, and people who just want to choose those people who know their telephone numbers. If the default were to remain per-line blocking with per-call enabling, these people would be able to have their numbers

disclosed to the called party whenever they chose by depressing the *82 enabling code. In a proceeding in which Pacific was involved, a CPUC Administrative Law Judge found that *82 enabling is currently feasible. Pacific did not appeal from that determination, and in fact has stated to the Commission in its recent *ex parte* filings that *82 enabling could be made available on its system at minimal cost.

The CPUC's determination of the per-line blocking with per-call enabling default for people with non-published and non-listed numbers is fundamental to the principle that individual citizens should be able to choose when their numbers are disclosed. The CPUC found that this principle is required by the privacy guarantee contained in Article I, § 1, of the California Constitution, and no party to the Commission's proceeding challenged that determination. *See* Pub. Util. Code § 1709. Moreover, the Commission's presumption that such parties would choose per-line blocking with per-call enabling over per-call blocking – if given the choice – is a rational presumption because those parties choose each month to have heightened privacy by paying monthly charges to have an unlisted number. Conversely, the presumption that such parties would choose per-call blocking is an irrational presumption because more likely than not, it is untrue. Such a presumption would ignore the conscious choice of such customers to keep their numbers private made every month when they pay their local exchange carrier for non-listed or non-published status.

The per-line blocking with per-call enabling default attempts to assure that any errors are on the side of ensuring that the non-published subscriber's number is not disclosed, absent affirmative and knowing consent. A per-call blocking default would err in favor of disclosure and would inevitably result in

some disclosures – perhaps thousands or millions of them – occurring where that is not the desire of the calling party. It is reasonable to assume that – more often than not – non-published subscribers will prefer to protect the privacy they pay for each month. *See Reply Declaration of Bridger M. Mitchell* filed by CPUC in FCC Caller ID proceedings. Moreover, the default chosen by the CPUC is more economical and efficient than a per-call blocking default. It represents a one-time sunk cost, while the processing costs of depressing the *67 blocking code with every call are volume- or usage-sensitive and thus recurring costs as well as costs that will inevitably require network and switch processor upgrades. *See Reply Declaration of Marvin A. Sirbu* filed by CPUC in FCC caller ID proceedings.

In addition, the per-line blocking with per-call enabling default for non-listed and non-published customers is the choice of California business interests, which were represented in the CPUC's Caller ID proceeding by the California Bankers Clearinghouse Association, a group comprised of California's largest and thus some of the country's largest banks. Members of that association included Bank of America, Wells Fargo Bank, Security Pacific Bank, Crocker Bank, First Interstate Bank, Bank of California and others. *See CBCHA Opening Brief,* Appendix B hereto.

Pacific has submitted data to the Commission (*see* Pacific's April 24th *ex parte*) suggesting that California originates 17% of the nation's interLATA calls, 23% of the nation's toll calls, 32% of the nation's intrastate toll calls and 36% of the nation's intraLATA calls. Even assuming these data to be correct, California has demonstrated in affidavits attached to its reply to oppositions to its PFR that approximately 94% of calls originating in California are intrastate and just 6% are

interstate, suggesting that the Commission should defer to California on this nuts-and-bolts aspect of how blocking options are selected by California telephone users. The Communications Act, the Commission and the Courts have all mandated that state telecommunications privacy regulation is not subject to federal pre-emption.

Finally, and not unimportantly, California's default protects the local exchange carriers such as Pacific Bell, GTEC and Contel of California, and other carriers – even those outside of California – that "pass" the calling party's number, from potential civil liability for the negligent or intentional unconsented-to disclosure of a calling party's telephone number. There is much California case authority to the effect that violation of the state constitutional right of privacy is an actionable tort. *See Porten v. University of San Francisco* (1976) 64 Cal.App.ed 825, 829-830; *Luck v. Southern Pacific Transp. Co.* (1990) 218 Cal.App.3d 1, 19; *Semore v. Pool* (1990) 217 Cal.App.3d 1087, 1094; *Wilkinson v. Times Mirror Corp.* ((1989) 215 Cal.App.3d 1034, 1042-43; *Cutter v. Brownridge* (1986) 183 Cal.App.3d 836, 842; *Park Redlands Covenant Control Committee v. Simon* (1986) 181 Cal.App.3d 87, 98; *Laguna Publishing Co. v. Golden Rain Foundation* (1982) 131 Cal.App.3d 816, 851; *Kinsey v. Macur* (1980) 107 Cal.App.3d 265, 272. By ensuring knowing consent to the disclosure of calling party numbers, the default chosen by California protects carriers from liability. Notably, state law remedies for privacy violations, such as civil lawsuits, are clearly not preempted under the Communications Act.

California respectfully asks that the Commission consider these points on the merits of the issues pending on reconsideration, and that it forthwith issue an order, *sua sponte*,

allowing California and other parties thirty days to respond to Pacific's recent *ex parte* filings herein.

Sincerely,

/s/ Mark Fogelman
Mark Fogelman
Principal Counsel

MF:cip

Attachments

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Unlisted Rates of the Top 100 MSAs for 1994

The proportion of U.S. telephone households not included in white page telephone directories, among the top 100 Metropolitan Statistical Areas (MSAs) ranged between 7.5% and 68.3% in 1994. As the national unlisted rate approaches nearly one-third (31.5% in 1994 versus 30.4% in 1993) of all U.S. telephone households, the need for representative random digit sampling techniques is more critical than ever. The table below presents the 1994 unlisted rates for the Top 100 MSAs.

MSA NAME	TOTAL MSA HHLDS	PERCENT HHLDS WITH PHONES	PERCENT ESTIMATED PHONE HHLDS UNLISTED	MSA RANK BASED ON PERCENT UNLISTED HHLDS
AKRON, OH PMSA	260,535	97.0	27.1	49
ALBANY-SCHENECTADY-TROY, NY	343,837	97.0	20.2	88
ALBUQUERQUE, NM	248,708	93.3	38.8	29
ALLENTOWN-BETHLEHEM-EASTON, PA	224,794	96.3	23.9	66
ANN ARBOR, MI PMSA	186,843	97.7	28.2	43
ATLANTA, GA	1,287,877	95.8	27.7	46
AUSTIN-SAN MARCOS, TX	365,735	93.6	22.7	76
BAKERSFIELD, CA	205,719	94.8	61.2	10
BALTIMORE, MD PMSA	925,989	96.6	31.0	34
BATON ROUGE, LA	201,250	95.0	19.8	91
BERGEN-PASSAIC, NJ PMSA	473,788	97.7	52.2	33
BIRMINGHAM, AL	337,400	95.8	28.9	67
BOSTON-LAWRENCE-LOWELL-BROCKTON, MA NECMA	1,415,764	98.2	20.0	89
BRIDGEPORT-STAMFORD-NORWALK-DANBURY, CT NECMA	305,807	97.7	17.9	96
BUFFALO-NIAGARA FALLS, NY	473,147	96.1	23.6	69
CHARLESTON-NORTH CHARLESTON, SC	198,873	94.1	29.9	37
CHARLOTTE-GASTONIA-ROCK HILL, NC-SC	484,454	95.1	26.6	50
CHICAGO, IL PMSA	2,776,385	96.1	37.7	21
CINCINNATI, OH-KY-IN PMSA	603,965	96.3	28.7	41
CLEVELAND-LORAIN-ELYRIA, OH PMSA	866,772	96.8	30.1	36
COLUMBUS, OH	549,322	96.3	26.2	55
DALLAS, TX PMSA	1,090,498	94.0	29.2	39
DAYTON-SPRINGFIELD, OH	374,057	95.9	26.6	51
DENVER, CO PMSA	733,913	97.1	35.8	26
DETROIT, MI PMSA	1,615,658	96.7	41.1	16
EL PASO, TX	197,062	91.6	39.3	19
FORT LAUDERDALE, FL PMSA	567,132	96.8	23.6	70
FORT WORTH-ARLINGTON, TX PMSA	552,948	93.9	29.2	40
FRESNO, CA	275,265	95.6	67.0	8
GARY, IN PMSA	227,173	95.7	32.5	31
GRAND RAPIDS-MUSKEGON-HOLLAND, MI	353,730	96.5	23.8	73
GREENSBORO-WINSTON-SALEM-HIGH POINT, NC	444,896	95.0	27.8	45
GREENVILLE-SPARTANBURG-ANDERSON, SC	327,930	92.3	24.1	65
HARRISBURG-LEBANON-CARLISLE, PA	236,563	97.8	20.5	87
HARTFORD, CT NECMA	425,400	97.1	19.6	90
HONOLULU, HI	280,953	98.0	39.7	18
HOUSTON, TX PMSA	1,330,969	93.7	35.9	25
INDIANAPOLIS, IN	565,912	95.5	23.6	71
JACKSONVILLE, FL	376,361	94.5	27.7	47
JERSEY CITY, NJ PMSA	210,884	93.5	48.0	13
JOHNSON CITY-KINGSPORT-BRISTOL, TN-VA	181,739	91.6	21.5	83
KANSAS CITY, MO-KS	636,113	96.7	25.5	58
KNOXVILLE, TN	254,431	94.7	19.8	92
LAS VEGAS, NV-AZ	417,940	95.8	59.6	12
LITTLE ROCK-NORTH LITTLE ROCK, AR	205,646	93.8	19.2	93
LOS ANGELES-LONG BEACH, CA PMSA	3,068,785	96.7	66.7	4

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MSA NAME	TOTAL MSA HHLDS	HHLDS WITH PHONES	PHONE HHLDS UNLISTED	PERCENT UNLISTED HHLDS
LOUISVILLE, KY-IN	385,132	95.0	23.2	74
MEMPHIS, TN-AR-MS	387,250	94.7	25.5	59
MIAMI, FL PMSA	712,421	95.1	37.4	23
MIDDDLESEX-SOMERSET-HUNTERDON, NJ PMSA	382,726	98.6	32.4	32
MILWAUKEE-WAUKESHA, WI PMSA	553,170	97.2	22.6	75
MINNEAPOLIS-ST. PAUL, MN-WI	1,016,682	98.5	17.1	97
MOBILE, AL	159,150	93.2	20.9	86
MONMOUTH-OCEAN, NJ PMSA	385,869	98.6	16.5	95
NASHVILLE, TN	405,149	95.4	22.6	77
NASSAU-SUFFOLK, NY PMSA	873,994	98.6	16.2	98
NEW BEDFORD-FALL RIVER-ATTLEBORO, MA NECMA	190,997	97.7	80.2	35
NEW HAVEN-WATERBURY-MERIDEN, CT NECMA	304,425	97.2	22.4	78
NEW ORLEANS, LA	483,910	94.0	27.9	44
NEW YORK, NY PMSA	3,267,852	93.4	34.5	28
NEWARK, NJ PMSA	594,838	96.1	34.6	27
NORFOLK-VIRGINIA BEACH-NEWPORT NEWS, VA-NC	548,029	94.3	25.9	56
OAKLAND, CA PMSA	810,042	98.0	67.3	2
OKLAHOMA CITY, OK	385,500	93.7	22.2	79
OMAHA, NE-IA	250,870	97.0	21.9	81
ORANGE COUNTY, CA PMSA	871,081	98.5	62.8	7
ORLANDO, FL	520,779	95.7	24.7	61
PHILADELPHIA, PA-NJ PMSA	1,837,191	97.5	33.6	30
PHOENIX-MESA, AZ	929,991	94.3	37.8	20
PITTSBURGH, PA	969,304	98.1	24.7	62
PORTLAND-VANCOUVER, OR-WA PMSA	659,017	97.2	44.1	15
PROVIDENCE-WARWICK-PAWTUCKET, RI NECMA	345,286	96.7	22.0	80
RALEIGH-DURHAM-CHAPEL HILL, NC	378,154	95.7	24.5	63
RICHMOND-PETERSBURG, VA	360,196	95.6	26.6	52
RIVERSIDE-SAN BERNARDINO, CA PMSA	997,309	96.0	62.3	8
ROCHESTER, NY	411,592	96.9	23.8	68
SACRAMENTO, CA PMSA	554,876	97.5	68.8	1
SALT LAKE CITY-OGDEN, UT	384,460	97.1	26.3	64
SAN ANTONIO, TX	491,954	93.1	37.6	22
SAN DIEGO, CA	941,365	97.8	65.0	6
SAN FRANCISCO, CA PMSA,	662,918	98.3	61.8	9
SAN JOSE, CA PMSA	532,580	98.8	66.6	5
SARASOTA-BRADENTON, FL	231,738	96.5	7.5	100
SCRANTON-WILKES-BARRE-HAZLETON, PA	252,264	97.9	23.6	72
SEATTLE-BELLEVUE-EVERETT, WA PMSA	870,295	98.2	37.3	24
SPRINGFIELD, MA NECMA	222,051	90.7	25.5	60
ST. LOUIS, MO-IL	969,659	96.7	24.2	64
SYRACUSE, NY	284,259	96.2	18.8	94
TACOMA, WA PMSA	239,190	97.1	44.5	14
TAMPA-ST. PETERSBURG-CLEARWATER, FL	915,977	94.7	21.7	82
TOLEDO, OH	232,033	95.7	27.7	48
TUCSON, AZ	285,849	94.2	39.8	17
TULSA, OK	296,477	98.6	25.8	57
VENTURA, CA PMSA	226,001	98.4	60.4	11
WASHINGTON, DC-MD-VA-WV PMSA	1,653,686	97.8	26.6	53
WEST PALM BEACH-BOCA RATON, FL	396,564	96.8	9.4	99
WICHITA, KS	185,600	95.7	21.1	85
WILMINGTON-NEWARK, DE-MD PMSA	200,847	97.5	29.3	38
WORCESTER-FITCHBURG-LEOMINSTER, MA NECMA	261,317	97.6	21.5	84
YOUNGSTOWN-WARREN, OH	234,271	95.8	28.6	42

Bold Face indicates the 10 MSAs with the highest incidence of unlisted phones.

NOTE: The unlisted rate is determined by comparing the estimated number of telephone households with the actual number of households found in telephone directories. Estimated telephone households are computed by taking projected household estimates at the county level calculated by Strategic Mapping, Inc. and applying a figure from the U.S. Census that indicates the percent of households with a telephone.

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EX PARTE LETTER FROM CPUC TO FCC HAND-DELIVERED AND FILED AT FCC ON APRIL 27, 1995

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION (Seal)
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

April 27, 1995 **BY HAND DELIVERY**

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: In the Matter of Rules and Policies Regarding Calling Number Identification Service – Caller ID, CC Docket No. 91-281

Dear Mr. Caton:

In accordance with Section 1.1206(a)(1) of the Commission's Rules, the People of the State of California and the Public Utilities Commission of the state of California ("California" or "CPUC") hereby submit for filing two copies of this letter and the attached letter to Chairman Hundt, Commissioners and staff (with attachments).

A copy of this letter and attachments is being delivered today to each of the persons listed below. This filing supplements California's *ex parte* filing date April 25, 1995, and received by the Secretary and the parties listed below on April 26, 1995.

Please make this letter and the attachments hereto part of the record.

Sincerely,

/s/ Mark Fogelman
Mark Fogelman
Principal Counsel

Attachments

cc:

Chmn. Hundt	S. Tetrault	J. Keegan	M. Katz
Comr. Barrett	J. Casserly	C. Bailey	M. Specht
Comr. Quello	J. Coltharp	R. Welch	M. DeLuca
Comr. Chong	K. Levitz	M. Bertman	M. Gordon
Comr. Ness	A. Gomez	W. Kennard	K. Brinkman
K. Wallman	L. Dubroff	L. Belvin	

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC UTILITIES COMMISSION (Seal)
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

April 27, 1995 **VIA HAND DELIVERY**

Ex Parte

Hon. Reed E. Hundt, Chairman,
Commissioners and Staff
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of Rules and Policies Regarding Calling Number Identification Service – Caller ID; CC Docket No. 91-281

Dear Chairman Hundt, Commissioners and Staff:

As a supplement to their *ex parte* letter to you dated April 25, 1995, and delivered to you and the Secretary on April 26, 1995, the People of the State of California and the Public Utilities Commission of the State of California (hereinafter collectively "California" or "CPUC") submit this additional letter addressing the issue of the propriety of the Commission's seeking to pre-empt California's default blocking option for non-published and non-listed telephone subscribers of per-line blocking with per-call enabling (*i.e.*, a "private" permanent presentation status with a *82 override).

California respectfully submits that any effort to pre-empt California's non-published subscriber default or to replace it with a per-call blocking default would be arbitrary and capricious and in violation of state and federal statutory and constitutional requirements.

After studying the issue, CPUC Staff is of the view that customer notice and education programs – even those as thorough and robust as the program required by the CPUC in its intrastate Caller ID decision – are unlikely to communicate information that CPN is being passed and how the customer can protect his or her privacy to more than 70% of a given population. This view is supported by a 1990 survey conducted by the Evaluation and Training Institute for the CPUC and testimony in the CPUC's Caller ID proceeding which refers to a 1990 GTE-California Community Issues and Priority Study, true copies of which are attached hereto.

Since educational programs will not reach all consumers, such programs cannot be an effective substitute for a default blocking option that will protect the privacy interests of customers who fail to receive actual notice. A default really addresses *only* those customers who fail to receive actual notice, since all customers who do receive actual notice may be presumed to have made a choice (*i.e.*, those customers who receive actual notice will either affirmatively choose a blocking option or permit the default, of which they have been informed, to make the choice for them).

California's non-published subscriber default is designed primarily to protect the interests of the 30% or more of California's approximately seven million non-published subscriber households that will not be informed by education efforts that CPN is being passed or how to protect the privacy of their unlisted telephone numbers. For these non-published subscribers who pay their local carrier each month for heightened privacy and fail to receive actual notice, a per-call blocking default would be the same as **no blocking option at all** because these people – at least 2.1 million California families and likely more – will not have been informed that they must

dial *67 each time they make a telephone call in order to preserve their privacy. The *only* way to protect the interests of these people is with the per-line blocking with per-call enabling default established for intrastate Caller ID by California.

An attempt to pre-empt California's default which results in the passage of CPN for these customers without providing them a known and understood blocking option would clearly violate their state constitutional and statutory privacy and free speech rights. For these customers, such a pre-emption decision would effectively compel and require them to disclose their unlisted telephone numbers on every call they make as a condition of using the telephone. Such compelled and involuntary disclosure of CPN would violate such customers' First Amendment right not to speak. *See Pacific Gas & Elec. Co. v. Pub. Util. Comm'n of California*, 475 U.S. 1, 10-11 (1987) (plur. opin.); *Harper & Row v. Nation Enterprises*, 471 U.S. 524, 559 (1985), *quoting Estate of Hemingway v. Random house*, 23 N.Y.2d 341, 348 (1968). It would also violate such customers' First Amendment right to speak anonymously. *See McIntyre v. Ohio Elections Commission*, ___ U.S. ___, 63 U.S.L.W. 4279 (Apr. 19, 1995); *Talley v. California*, 362 U.S. 60, 64 (1960); *Huntley v. Pub. Util. Comm'n*, 69 Cal.2d 67, 74 (1968). It would negate such customers' reasonable expectation of privacy in their unlisted numbers and violate their constitutionally protected right of privacy in those numbers. *Cf. People v. Chapman*, 36 Cal.3d 98, 113 (1984). It would also violate the standards of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)-(F). And it would also violate the requirements of the Communications Act, *see* 47 U.S.C. § 152(b) and the decisions of the U.S. Supreme Court, *see Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355 (1986).

In addition to failing to protect the free speech and privacy rights of a substantial number of California citizens, such preemption would be arbitrary and capricious because it would be replaced a less costly blocking option with a more costly blocking option. The default chosen by the CPUC is more economical and efficient than a per-call blocking default because it represents a one-time sunk cost, while the processing costs of depressing the *67 blocking code with every call are volume- or usage-sensitive and thus recurring costs as well as costs that will inevitably require network and switch processor upgrades. *See Reply Declarations of Marvin A. Sirbu and Bridger M. Mitchell* filed by the CPUC in support of its PFR and PFR Reply in these proceedings. Such preemption would therefore result in both reduced privacy protection for people who need greater privacy protection and unnecessarily increased cost to carriers.

Nor is there any reason to suppose that California's default will limit or chill the availability of useful CPN-based business services from those who would seek to provide them. As noted in California's letter dated April 25, 1995, and attachments, the per-line blocking with per-call enabling default for non-listed and non-published customers is the choice of California business interests, including some of the country's largest banks. *See CBCHA Opening Brief* attached to April 25 letter. Nor is there any reason to assume that California's default will reduce the viability of Caller ID service in California. Testimony in the CPUC's Caller ID proceeding, based upon a study by GTEC, demonstrated that non-published subscribers purchased Caller ID service three times as much as those subscribers with published telephone numbers. *See* testimony, p. RT 2843, attached.

Like many of the parties petitioning for reconsideration herein, California has urged the Commission, in establishing standards for interstate Caller ID service, (1) to defer to the caller ID blocking regime of the originating state, subject to minimum federal constitutional privacy standards. (2) to require the passage of CPN on interstate calls free of charge, (3) to require the terminating state to honor a privacy indicator accompanying and interstate call, and (4) to establish *67 as the standardized blocking code and *82 as the standardized enabling code nationwide. California has also requested, along with the NARUC and the Pennsylvania Public Utility Commission, that the Commission stay implementation of its order on reconsideration pending appellate review. While California would be delighted if the Commission were to adopt all of California's recommendations on reconsideration, it would still be constrained to oppose any attempt to pre-empt its non-published subscriber default. In the event of any such pre-emption, California requests that such pre-emption be stayed pending appellate review or that California carriers be prohibited by the Commission from passing CPN pending appellate review. Without such a stay or prohibition, the rights of a substantial number of California citizens will be violated. California respectfully asks that the Commission consider and rule upon these points on the merits of the issues pending on reconsideration.

Sincerely,

/s/ Mark Fogelman
Mark Fogelman
Principal Counsel

Attachments

A287

SURVEY OF CALIFORNIA RESIDENTS' AWARENESS AND KNOWLEDGE OF TELEPHONE SERVICES AND COSTS

Conducted for the
Telecommunications Education Trust
Public Utilities Commission

Evaluation and Training Institute
August 1990

EXECUTIVE SUMMARY

The following report summarizes the findings from a statewide survey conducted by the Evaluation and Training Institute (ETI) for the Telecommunications Education Trust (TET). The Trust was established by the Public Utilities Commission to educate California residents over a six-year period about the telecommunications system and the service options available to them. The purpose of the survey was to establish baseline data on residents' current level of awareness to help target and evaluate the effectiveness of the consumer education campaign.

In conjunction with the TET, ETI developed a comprehensive survey covering a broad range of telecommunications issues. A total of 4000 interviews were completed by telephone using a random digit dialing sampling procedure. This sample size was selected to provide statistical validity at a 95% confidence level, plus/minus 5% error. Data were weighted according to 1990 census information in order to allow generalizability of the findings to the population of California residents. Analyses included frequencies for all respondents and cross-tabulation analyses of differences by geographic area, gender, age, income, and ethnicity.

Overall, the survey found that the vast majority of residents trust their local telephone company to provide them with accurate and reliable information. If they have questions about their telephone service, more than 80 percent of the respondents said they call their local telephone company. Most residents know that information is available in the front of the telephone book, however, awareness is low regarding

the specific types of information provided. Less than half regularly read the information inserts included in their telephone bills.

In general, the majority of respondents were aware of information related to basic telephone service and more common options such as call-waiting. However,

- *More than half of the respondents were not aware of: special services for non-English speaking customers (60%), medical monitoring via telephone (56%), and cancel call waiting (76%).*
- *Approximately 40 percent of the respondents were not aware of: private pay phones (40%), differences in charges for private pay phones (42%), call-forwarding (38%), and speed dialing (47%).*
- *The majority were not aware of their right under state law to basic, affordable telephone service (61%).*
- *More than half of the respondents did not know who regulates telephone service in California (61%).*

These findings indicate that Californians could benefit from greater information about special services, new telecommunications options, and special rates and services for low-income households.

The survey also found that more than half of the respondents were concerned about privacy issues (57%), approximately one third (35%) said they were "very concerned", especially regarding the bugging of telephone lines (51%). Other concerns included telemarketing and/or telephone surveys, party lines, and other interruptions.

Five important findings emerged from the cross-tab analysis:

- *Awareness was consistently lowest among Hispanics and residents with a primary language other than English.*
- *Awareness was generally lower among minority residents (Hispanics, Asians, Blacks) than residents who are White.*
- *Older adults (51 years and over) were least aware of new technologies such as call waiting, speed-dialing, call-forwarding, etc.*
- *Residents of rural areas were consistently less knowledgeable about telecommunications than residents in urban areas.*
- *Concerns related to privacy issues were greatest among minority residents.*

Statistically significant differences in awareness were also found according to gender, income, and geographic area.

These findings suggest that the Trust should continue to target its information efforts at minorities, particularly Hispanics and those who do not speak English as a primary language. Telecommunications awareness efforts should also be aimed at rural communities and at older adults. Finally, the study indicates that Californians are concerned about telephone privacy. More in depth information is needed in this area, particularly from minorities, who expressed the greatest privacy concerns.

- *Seven percent thought that they could not buy a telephone from their local phone company, 73% thought they could, and 20% did not know.*

Information Sources

- *Ninety-one percent of respondents are aware of the information pages in the front of the telephone book. However, fewer were aware of the specific types of information available. Twenty-seven percent were not aware of emergency information, 78% were not aware of area code maps, 79% were not aware of information regarding government services and 89% were not aware of the long distance information.*

- *Less than half of respondents "usually" read the information inserts in their phone bill (44%); 41% read them "sometimes" or "rarely" and 14% never read them. However, 82% believe the inserts provide accurate information.*

- *Eighty-four percent call their local telephone company when they want information about telephone service; a friend or relative was named by 1% each and 14% named other.*

- *Ninety-one percent believe that their local phone company is providing them accurate and reliable information; 8% did not think the information was accurate and reliable and 1% did not know.*

Services and Costs

Respondents were asked a series of questions about the availability and costs of certain services offered by their local telephone company. With respect to respondents' knowledge of services offered by their local phone company:

- *Sixteen percent said they could not get a set monthly fee for unlimited calls; 57% said they could, and 27% did not know about this service.*

- *Twelve percent said that reduced monthly fees were not available for those with low incomes; 55% said they were, and 33% didn't know.*
- *Nine percent said Lifeline service was not offered by their local phone company; 61% said it was offered, and 30% didn't know.*

CACD Ms. Purcell

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA

ADMINISTRATIVE LAW JUDGE JOHN S. LEMKE, presiding.

In the Matter of the Application of Pacific Bell (U 1001 C), a corporation, for approval of COMMSTAR Features.	)	Application No. 90-11-011
	)	Application No. 90-12-065
And related matters.	)	Application No. 91-01-039

REPORTER'S TRANSCRIPT

San Francisco, California
July 19, 1991
Pages 2704 - 2809
Volume 22

Barbara A. Evanshen
Reported by: Lynn A. Stanghellin

H.C. Kaufman Jr. Official Reporter

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

505 Van Ness Avenue, San Francisco, California 94102

* * *

[p. 2784] Good morning, Mr. Mirza.

THE WITNESS: Good morning.

HASSAN MIRZA, called as a witness by the Division of Ratepayer Advocates, having been sworn, testified as follows:

ALJ LEMKE: Be seated and spell your name, please.

A My name is Hassan Mirza, H-a-s-s-a-n, M-i-r-z-a.

ALJ LEMKE: Ms. Adu.

MS. ADU: Let the record show that I have a copy of DRA's direct testimony, which is dated May 24, 1991.

I'm handing a copy to the judge and a copy for the court reporter.

ALJ LEMKE: I will mark that as Exhibit No. 54, Ms. Adu.

DIRECT EXAMINATION

BY MS. ADU:

Q Mr. Mirza, which parts of this exhibit did you prepare?

A I prepared Chapter 1, Chapter 2 except Section 2.2.5 and 2.2.6.

In addition, I prepared Chapter 3.

Q Would you turn to Appendix B, at page HMM-1.

ALJ LEMKE: That page again, Ms. Adu? I'm sorry.

MS. ADU: Page H as in Harry, M as in Mary, M as in Mary dash 1.

Q Is that a statement of your qualifications?

* * *

[p. 2808] A Or if DRA's blocking proposal is modified. In other words, the survey that we are requesting is under the assumption that DRA's blocking proposal is either modified or not accepted by the Commission.

Q So you have no further definition of what might be effective as opposed to ineffective?

A Are you asking me in terms of what will be the actual percentage effective?

If customer does not understand privacy, the blocking option and privacy implications, the customer's privacy information may be compromised.

Q Do you mean by that any particular customer, or a number of customers?

A All customers.

Q So to be effective would have to be effective with respect to a hundred percent of customers?

A I believe I did not specify exact percentage, but all customers should be made aware and understand the various services that companies are offering.

Q Utilities will be engaged in a program designed to do that, won't they?

A Well, whether it is effective or not, that's another question.

Q But you don't have any recommendation with regard to what constitutes effective or not?

* * *

CACD Ms. Purcell

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA

ADMINISTRATIVE LAW JUDGE JOHN S. LEMKE, presiding.

In the Matter of the Application of Pacific Bell (U 1001 C), a corporation, for approval of COMMSTAR Features.	)	Application No. 90-11-011
	)	Applications No. 90-12-065
And related matters.	)	No. 91-01-039

REPORTER'S TRANSCRIPT

San Francisco, California
July 22, 1991
Pages 2810 - 2928
Volume 23

Reported by: William J. Harter
Robert C. Abille

H.C. Kaufman Jr. Official Reporter

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

505 Van Ness Avenue, San Francisco, California 94102

* * *

[p. 2843] by that population of subscribers who have unlisted and nonpublished subscriber status?

A Right

Q That's correct.

A For this report, yes.

Q Are you aware that, according to Dr. Elseewi, the Kentucky take rate for CNID by nonpublished number subscribers is actually three times higher than that of subscribers with published telephone numbers.

A Well, Kentucky experience may dictate that, but in California – there's a demographic difference in California.

Comparing California to Kentucky based on the 1990 census, Kentucky as a state has a population of about 3.7 million when California's total population is about 29.8 million; in Kentucky there's 92 percent white, which represents 3.3 or 3.4 million; in California it's 69 percent white which represents 20.5 million.

In California there's more minorities than Kentucky based on these statistics, so just saying that happened in Kentucky does not necessarily mean it would happen in California.

Q Are you aware that the Kentucky experience in this regard also occurred, if you will, in New Jersey, where we ended up – it ended up with the nonpublished number subscribers ending up with a

* * *

[p. 2854] The Commission has not determined what is the appropriate blocking, whether it's the utilities or whether it's DRA or something modified.

Until that issue is resolved and until how the utility needs to undertake this CNID program, until the Commission

decides the costing and pricing issues, and until the Commission decides whether these services are Category 2 or Category 1, all those issues – until they're resolved, DRA believes that the company may be duplicating some of those efforts.

Q So then, as I understand it, DRA as standing by both of those recommendations with regard to notification programs beginning two months prior to the product offering, and also standing by this recommendation so that effectively there will be some sort of time lag issued between the decision being offered and the product being offered?

A That's correct.

Q Turning now to page 3-10, the last paragraph on that page. 3-10.

A Yes, I'm there.

Q The second sentence says:

"GTEC does not have a plan to do customer education programs through mass media. Mass media includes radio, television, local newspapers and minority-owned newspapers."

[p. 2855] I'd like to ask you some questions about the radio and television advertising.

Have you reviewed or learned of any studies which indicate that television and radio media are not very successful in reaching audiences with a message which listeners will remember? And again, our concern here, as you may well recall, GTEC has taken the position that radio and television are not effective media for purposes of the customer notification and educational programs.

Is DRA faulting GTEC for those pursuing two avenues of media?

Is DRA faulting GTEC for not pursuing those two?

A Well, I would not put the word faulting.

I'm saying DRA is concerned that the utility does not consider this. In fact, in one of the responses that DRA received, GTEC mentioned a study called California – I'm sorry, I don't know the exact title. It's a study which cited how many people understand the use by media. For example, bill inserts, 20 percent of the time people read inserts. Local newspapers, 27 percent of the time people read the newspapers. Major dailies, 24 percent. Radio, nine percent. TV, 13 percent. I didn't make the numbers.

Q Well, as a follow-up question, if GTEC could devise and implement an effective customer

* * *

[p. 2897] reference was 2-16, did I understand you to make a statement that there are no problems with Call Trace?

A I may have misspoken that part.

DRA still has on a general basis some costing and pricing concerns for categorization of certain utilities.

Q On page 2-14, the second full paragraph, Ms. Vanderpan referred you to the first sentence which reads:

> "The three utilities failed to show that per-call blocking is a balanced approach to privacy in California."

Is it your opinion that this statement should be decided by the Commission?

A Yes, this statement should be decided by the Commission, but DRA has offered its professional opinion in this statement that DRA believes that the utilities address the customers who do not understand Caller ID and who do not wish to participate in Caller ID services.

Q So, in other words, DRA has its opinion, but the Commission makes the decision?

A That's correct.

Q Also when GTEC was cross-examining you, do you recall citing statistics from a survey on the use of television and radio?

You made reference to some survey.

[2898] A That's correct.

In a data response, the Data Response No. GAPGE003, data response dated March 22nd, the data that I cannot recall the name of is a survey that is called 1990 GTE California Community Issues and Priority Survey.

Q And priority?

A Priority Survey.

Q Okay.

A I believe that's what the information which I cited was from based on this data request.

Q You were also questioned regarding Exhibit 7 which is the data from Centel, and it was brought out that there is a 5.1 percent penetration rate of Caller ID in Nevada.

How does this 5.1 percent penetration rate compare with that of other states?

A Okay. Basically the 5.1 percent is one of the highest penetration rates for Caller ID for per-line blocking or absolute per-line blocking being offered.

So with per-line blocking being offered, Caller ID service is not adversely affected.

Q Mr. Mirza, regarding your statement that BellCore is developing a new standard to allow different codes for per-call blocking and per-line unblocking, do you know about when this will be released?

* * *

EXCERPTS FROM CALIFORNIA'S UNOPPOSED MOTIONS FOR JUDICIAL NOTICE FILED IN THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, ALL OF WHICH ARE PUBLIC DOCUMENTS

Excerpts of Pacific Bell Customer Awareness Study

(From California's Unopposed Motion for Judicial Notice filed in the Ninth Circuit below on August 17, 1995)

CUSTOMER AWARENESS STUDY ON INSIDE WIRING POLICY

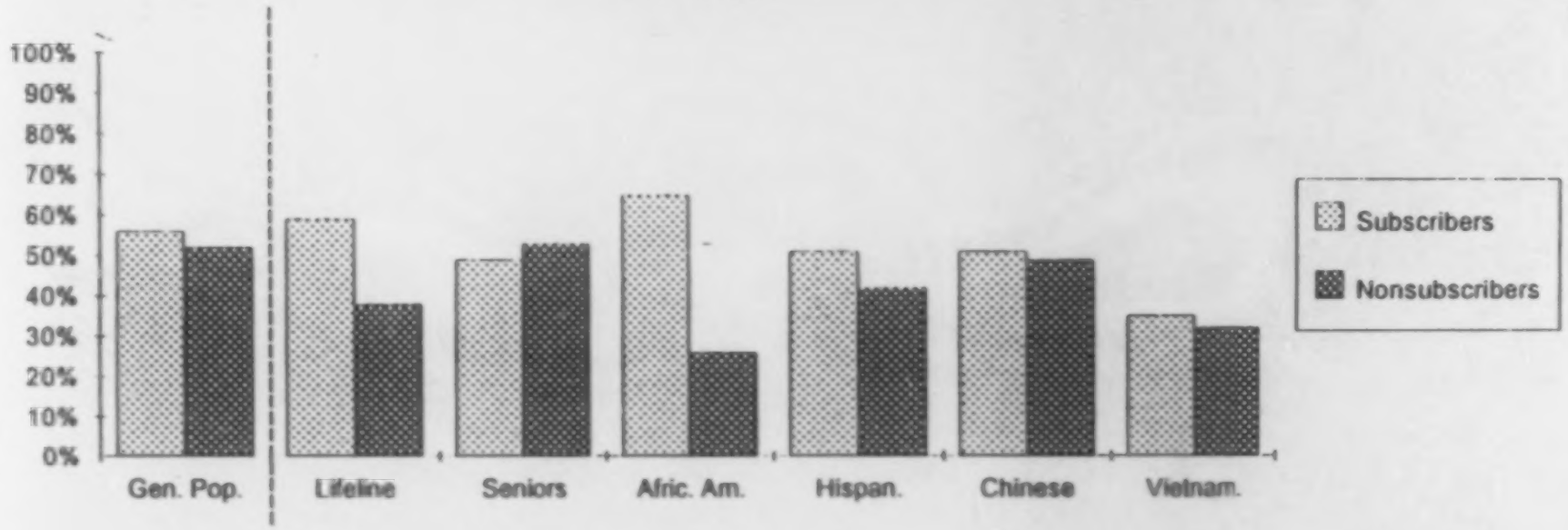
Pacific Bell Residential Customers

Prepared for
California Public Utilities Commission

May 15, 1993

Freeman, Sullivan & Co.
131 Steuart Street
Suite 500
San Francisco, CA 94105
415 777-0707
FAX 415 777-2420

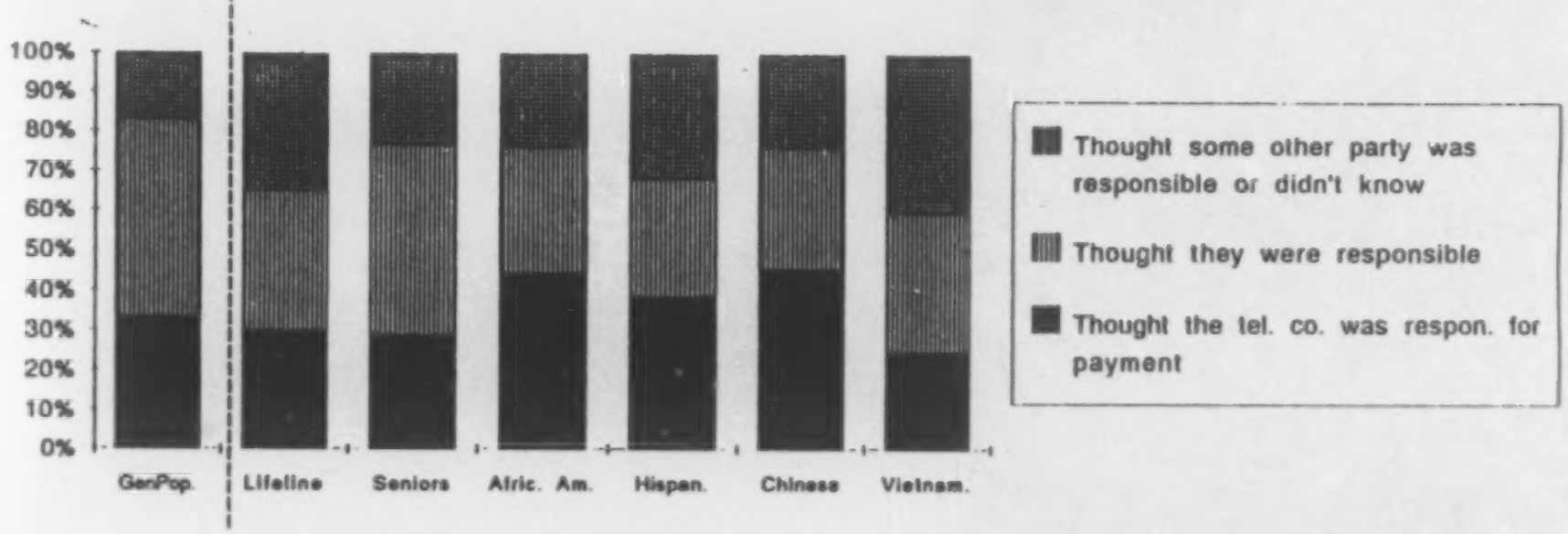
AWARENESS OF RESPONSIBILITY OF COST TO REPAIR INSIDE WIRING
(% of Subscribers and Nonsubscribers to Inside Wiring Insurance Who Answered Correctly)



- The samples for the Subscribers and Nonsubscribers in the General Population were provided by Pacific Bell.
- The subscription status of the Lifeline, Senior, African American, Hispanic, Chinese and Vietnamese populations were determined after data collection by matching the respondents' phone number to Pacific Bell's customer database.

AWARENESS OF RESPONSIBILITY FOR PAYMENT OF REPAIRS TO INSIDE WIRING AMONG NONSUBSCRIBERS

(% Who Thought the Telephone Company, They or Some Other Party was Responsible for Payment of Repair to Inside Wiring)



- The percentages in this graph are based on the portion of the subpopulations who said they did not subscribe or did not know whether they subscribed to inside wiring insurance.

- The General Population (Gen. Pop.) is a weighted average of just the Subscriber and Nonsubscriber populations, the samples for which were provided by Pacific Bell. The Lifeline, Senior, African American, Hispanic, Chinese and Vietnamese populations are separate samples and are not included in the weighted average for the General Population.

Awareness of Responsibility for Maintenance/Installation of Telephone System Components Among Nonsubscribers (% of the Subpopulations Who Thought the Telephone Company Was Responsible for Maintenance/Installation of Telephone System Components)

	General Population	*Lifeline*	*Seniors*	*African American*	*Hispanic*	*Chinese*	*Vietnamese*
Utility Service Box	73%	59%	72%	67%	65%	71%	49%
Inside Wiring	42%	46%	59%	56%	67%	65%	42%
Install. of I.W. for Addit. Phone Jacks	40%	41%	26%	52%	47%	60%	40%
Install. of Additional Jacks	36%	38%	3%	35%	46%	55%	38%
Phone Jack	20%	24%	21%	40%	33%	33%	26%
Telephone Instrument	10%	11%	16%	17%	16%	21%	7%

- The percentages in this graph are based on the portion of the subpopulations who said they did not subscribe or did not know whether they subscribed to inside wiring insurance.

- The General Population (Gen. Pop.) is a weighted average of just the Subscriber and Nonsubscriber populations, the samples for which were provided by Pacific Bell. The Lifeline, Senior, African American, Hispanic, Chinese and Vietnamese populations are separate samples and are not included in the weighted average for the General Population.

Excerpts from G.T.E. – California Customer Awareness Study

(From California's Unopposed Motion for Judicial Notice filed in the Ninth Circuit below on August 17, 1995)

CUSTOMER AWARENESS STUDY ON INSIDE WIRING POLICY

GTEC Residential Customers

Prepared for
California Public Utilities Commission

October 15, 1993

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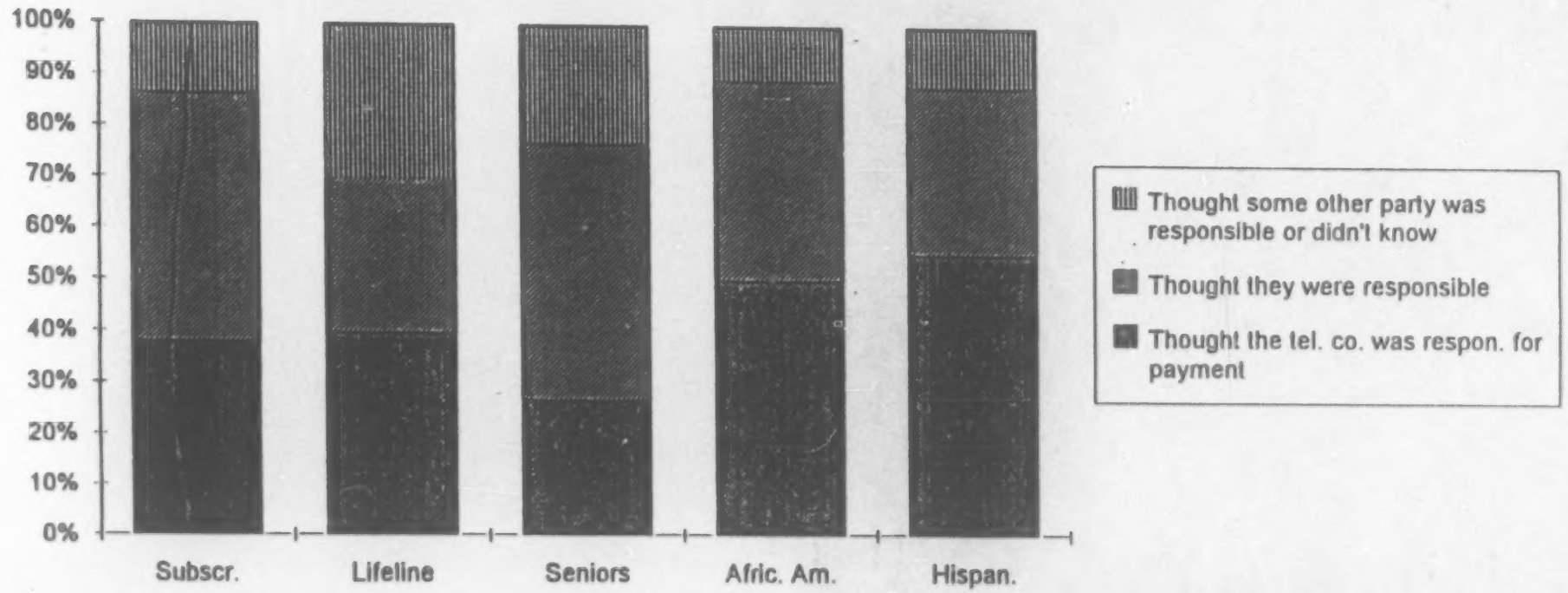
San Francisco, CA 94105
415 777-0707
FAX 415 777-2420

A307

AWARENESS OF RESPONSIBILITY FOR PAYMENT OF REPAIRS TO INSIDE WIRING AMONG NONSUBSCRIBERS

(% Who Thought the Telephone Company, They or Some Other Party was Responsible for Payment of Repair to Inside Wiring)



- The percentages in this graph are based on the portion of the SUBSCRIBER population and the subpopulations who said they did not subscribe or did not know whether they subscribed to inside wiring insurance.
- The Subscriber and Lifeline population samples were provided by GTEC.
- The Subscriber population includes customers who subscribe to GTEC's inside wiring repair plan. The Lifeline, Seniors, African American and Hispanic populations include both subscribers and nonsubscribers as they occur naturally in the populations.

A308

Awareness of Responsibility for Payment of Repair/Installation Telephone System Components Among Nonsubscribers (% of the Subpopulations Who Thought the Telephone Company Was Responsible for Payment of Repair/Installation of Telephone System Components)

	Subscribers	*Lifeline*	*Seniors*	*African American*	*Hispanic*
Utility Service Box	54%	55%	58%	57%	50%
Inside Wiring	38%	40%	27%	50%	55%
Phone Jack	20%	21%	7%	23%	24%
Telephone Instrument	13%	8%	12%	7%	22%
Install. of I.W. for Addit. Phone Jacks	9%	19%	3%	16%	16%
Install. of Additional Jacks	3%	4%	8%	2%	7%

- The percentages in this graph are based on the portion of the SUBSCRIBER population and the subpopulations who said they did not subscribe or did not know whether they subscribed to inside wiring insurance.
- The Subscriber and Lifeline population samples were provided by GTEC.
- The Subscriber population includes customers who subscribe to GTEC's inside wiring repair plan. The Lifeline, Seniors, African American and Hispanic populations include both subscribers and nonsubscribers as they occur naturally in the populations.

Excerpts from PacBell/GTEC Customer Awareness Study

(From California's Unopposed Motion for Judicial Notice filed in the Ninth Circuit below on August 17, 1995)

Affordability of Telephone Service

Volume 1

– Non-Customer Survey –

conducted for
GTE and Pacific Bell

Field Work: September-October, 1993

Field Research Corporation
FRC

Marketing and Public Opinion Research Since 1945

Chapter 7.0 Awareness of Universal Lifeline Telephone Service (ULTS)

Examines:

Whether ever heard of ULTS

Ability to describe it correctly among those aware

Awareness of Custom Calling Services

It compares awareness of ULTS among non-customers and the matched customers.

Awareness of "Universal Lifeline Telephone Service" (Name)

	Non-Customers							
				Hispanic				
	Total	GTE	PB	Tot	LD	NLD	Black	White
	%	%	%	%	%	%	%	%
Heard of something called Universal Lifeline Telephone Service?								
Yes, heard of it	54	45	55	48	50	44	68	55
Can describe correctly (a)	40	39	40	38	40	35	47	39
Close to correct (b)	4	1	4	-	-	-	6	12
Incorrect (c)	3	1	3	1	1	2	6	3
Don't know/not reported	7	4	7	8	9	7	10	2
Not heard of it	46	55	46	52	50	56	32	45
Base	(571)	(288)	(283)	(347)	(205)	(142)	(115)	(94)
% of those aware who can volunteer —								
Correct description	74	87	73	79	80	80	69	71
Close to correct (cum)	81	89	80	79	80	80	78	93

Awareness of "Universal Lifeline Telephone Service" (Name) *Table 7.1*

Non-customers were asked if they had ever heard of something called Universal Lifeline Telephone Service. Those who said they had were than asked to describe, open-ended, what they think it is and who they think it is for.

Responses are shown opposite.

Highlights

Slightly more than half (54%) of the non-customers say they have heard of a service called Universal Lifeline Telephone Service. The large majority of those aware could volunteer the correct description, i.e. that it is for low income persons and/or that it is a lower rate service. A few more offer a description that suggests they may know what it is, i.e. that it is a limited call service and/or for older persons.

Thus, 40% are aware of the name *and* can volunteer (correctly) what it is.

46% have never heard of the name, Universal Lifeline Telephone Service.

By company: Pacific Bell non-customers are more aware of the name than GTE non-customers (55% vs. 45%), but fewer of those aware could correctly describe it so that the percentage aware AND able to describe correctly is about the same for both companies: 40% and 39% respectively.

By ethnicity/race: Black non-customers have higher awareness of the name (68%) than Whites (55%), and considerably higher than LD Hispanics (50%) or NLD Hispanics (44%). However, Blacks and Whites are somewhat less able to come

up with the correct description than Hispanics with the result that the percentage aware and able to describe correctly is more nearly the same across the groups: 47% Black, 40% LD Hispanic, 39% White and 35% NLD Hispanic.

Awareness of ULTS Among Matched Customers

	Matched Customers							
				Hispanic				
	Total	GTE	PB	Tot	LD	NLD	Black	White
	%	%	%	%	%	%	%	%
Heard of something called Universal Lifeline Telephone Service?								
Yes, heard of it	69	63	69	67	72	60	79	64
Say have it now	47	41	47	43	41	46	52	51
Don't say have it	22	23	22	24	31	15	27	12
Can describe correctly (a)	14	17	14	17	24	7	13	7
Close to correct (b)	1	1	1	*	*	-	4	-
Incorrect (c)	3	1	3	2	1	4	4	3
Don't know/not reported	5	4	5	5	6	4	6	3
Net: Say have/correct	61	58	61	60	65	53	65	58
Not heard of it	32	37	31	33	28	40	21	36
Base	(566)	(287)	(279)	(347)	(201)	(146)	(112)	(98)
% of those aware but DO NOT SAY HAVE IT who can volunteer —								
Correct description	64	74	64	71	77	47	48	58
Close to correct (cum)	68	78	68	71	77	47	63	58

Awareness of ULTS among Matched Customers *Table 7.2*

Matched customers were asked the same question as customers.

Responses are shown opposite.

Highlights

69% of the matched customers have heard of a service called Universal Lifeline Telephone Service: within this group, 47% claim to have it and 22% do not, but are aware of it. Most of the DON'T HAVE, BUT AWAREs can describe it correctly; as a result, 61% of the matched customers are aware of this service by name and can correctly describe it (as compared to 40% for non-customers).

By company: Awareness of ULTS among matched customers is the same for both companies. (Differences are not statistically significant.)

By ethnicity/race: Among matched customers, awareness of the name ranges from a high of 79% among Blacks to 60% among NLD Hispanics.

Awareness of ULTS: Non-Customers vs. Matched Customers

	Total			GTE			PB		
		Customers			Customers			Customers	
	Non-Cust	Total	Don't Have	Non-Cust	Total	Don't Have	Non-Cust	Total	Don't Have
	%	%	%	%	%	%	%	%	%
Heard of ULTS —									
Yes, heard of it	54	69	41	45	63	37	55	69	42
Say have it now	-	47	-	-	41	-	-	47	-
Don't say have it	54	22	41	45	23	37	55	22	42
Can describe correctly (a)	40	14	25	39	17	29	40	14	25
Close to correct (b)	4	1	2	1	1	1	4	1	2
Incorrect (c)	3	3	5	1	1	1	3	3	5
Don't know/not reported	7	5	10	4	4	6	7	5	10
Net: Say have/correct	40	61	25	39	58	29	40	61	25
Not heard of it	46	32	59	55	37	63	46	31	59
Base	(571)	(566)	(285)	(288)	(287)	(159)	(283)	(279)	(126)
% Aware but don't say have it who can volunteer —									
Correct description	74	64	61	87	74	78	73	64	60
Close to correct (cum)	81	68	66	89	78	81	80	68	64

Awareness of ULTS: Non-Customers vs. Matched Customers

Table 7.3

The table opposite shows awareness of ULTS among non-customers and matched customers.

Highlights

Among all groups, matched customers have higher awareness of ULTS than non-customers. However, among those aware of the name, non-customers tend to be better able to say what it is than customers.

NOTE: Caution is urged in comparing awareness of ULTS among customers and non-customers:

The fact that customers have higher awareness does NOT indicate that it is this higher awareness that CAUSED them to get phone service because the causal relationship is not clear, i.e. one cannot assume that it is higher awareness among customers that caused them to get ULTS. They could be more aware because they have contacted the phone company and have phone service.

Probe for Awareness of Special Service for Lower Income People

	Matched Customers							
				Hispanic				
	Total	GTE	PB	Tot	LD	NLD	Black	White
	%	%	%	%	%	%	%	%
Heard of ULTS	69	63	69	67	72	60	79	64
Say have it	47	41	47	43	41	46	52	51
Don't say have it	22	23	22	24	31	15	27	12
Can describe correctly	14	17	14	17	24	7	13	7
Cannot describe correctly	8	6	8	7	7	8	14	5
Have not heard of	32	37	31	33	28	40	21	36
Total: Say have or can describe	61	58	61	60	65	53	65	58
Not aware or can't describe ULTS	40	42	40	40	35	47	35	42
Aware "low income service"	12	13	12	12	16	8	11	13
Say have it	5	5	5	6	10	1	4	3
Don't say have it	7	8	7	6	6	7	7	10
Base	(566)	(287)	(279)	(347)	(201)	(146)	(112)	(98)
% of those NOT AWARE of ULTS who are —								
Aware "low income service"	30	31	30	30	46	17	31	31

7.4

Probe for Awareness of Special Service for Lower Income People *Table 7.4*

Customers who had not heard of ULTS (or had heard of it but could not volunteer the correct description) were asked this follow-up question:

> *"Are you aware that the phone company offers a special type of phone service for lower income people?"*

Due to an error in the SKIP instructions printed on the questionnaire, non-customers were not asked this follow up probe. As a result, while we have awareness of ULTS (name) among non-customers, we do not have awareness of the more generic concept of a special service for lower income people among non-customers. We can, however, examine the extent to which the above probe INCREASED awareness of this type of service among *customers*. We can then use this measurement to provide an improved estimate of what awareness might have been had non-customers been asked the question. The analysis assumes that the increase among non-customers could be less than among customers, but, logically, it could not be more.

Highlights

Among *customers*: When customers who are not aware of ULTS or are aware, but cannot correctly describe it (40% of all customers) are asked if they are aware the phone company offers a special service for lower income persons, 30% say they are (30% of 40% = 12%). Thus, the probe adds another 12% to awareness among customers. This brings total awareness of this type of service to 73% among customers: 47% have it, 14% don't have it but are aware and can correctly describe it and another 12% are aware of a low income

service. The large majority of those not aware of the name are also not aware there is a low income service.

These data from customers suggest that the MOST the probe could have done among non-customers would have been to increase awareness of a ULTS type service by 30% of those not aware of the name. Applying this logic, one can provide an improved estimate of what the highest awareness among non-customers would have been if the probe had been asked. This is done on the following page.

Awareness of ULTS, Low Income Service and CCS (Summary)

	Total	GTE	PB	Hispanic Tot	Hispanic LD	Hispanic NLD	Black	White
	%	%	%	%	%	%	%	%
Non-customers								
Aware ULTS and can correctly describe it	40	39	40	38	40	35	47	39
*Aware ULTS or a low income service (adjusted)	58	58	58	57	68	46	63	58
Aware CCS	76	71	76	75	80	68	84	71
Base	(571)	(288)	(283)	(347)	(205)	(142)	(115)	(94)
Matched customers								
Aware ULTS and can correctly describe it	61	58	61	60	65	53	65	58
Aware ULTS or a low income service	73	71	73	72	81	61	76	71
Aware CCS	84	82	85	87	89	85	88	77
Base	(566)	(287)	(279)	(347)	(201)	(146)	(112)	(98)
Customers with "Say Have ULTS" removed								
Aware ULTS and can correctly describe it	25	29	25	30	42	13	30	12
Aware ULTS or a low income service	43	46	43	46	60	27	46	36
Aware CCS	86	78	87	88	88	89	86	85
Base	(285)	(159)	(126)	(189)	(103)	(86)	(44)	(48)

Awareness of ULTS, Low Income Service and CCS (Summary)

Table 7.5

Highlights

The table opposite shows the percentage of non-customers aware of ULTS and able to correctly describe it (40%). On the next line, it shows the "adjusted awareness" of this type of service by applying what the probe did to awareness among customers to non-customers.

As shown there, awareness of this type of service among non-customers if the probe had been used would almost undoubtedly be more than the 40% (aware ULTS and describe correctly) but it would NOT be higher than 58% (the adjusted figure).

Non-customers were also asked if they had ever heard of Custom Calling Services like Call Waiting. (See next page.) As shown opposite, 76% of the non-customers say they have heard of these. Thus, awareness of Custom Calling Services among non-customers is higher than the highest estimate of awareness of ULTS if non-customers had been asked the probe.

It is also important to note that non-customers as a group are almost as aware of Custom Calling Services as are customers: 76% vs. 84%. This finding suggests that, had the probe been included, awareness of ULTS among non-customers would probably be closer to the 58% (more like customers) than to the 40%.

NOTE: The failure to ask the probe was due to a clerical oversight in the final proofing of the questionnaire; Field Research very much regrets the error and has tried, in this analysis, to provide the best estimate of awareness of the generic service using the data available.

Awareness of Custom Calling Services

	Total	GTE	PB	Hispanic			Black	White
				Tot	LD	NLD		
	%	%	%	%	%	%	%	%
Non-customers								
Have heard of CCS	76	71	76	75	80	68	84	71
Aware cost extra/are optional (a)	91	90	91	87	84	93	94	97
Not aware of this (a)	9	10	9	13	16	7	6	3
Have not heard of CCS	25	29	24	25	20	32	16	29
Base	(571)	(288)	(283)	(347)	(205)	(142)	(115)	(94)
Matched customers								
Have heard of CCS	84	82	85	87	89	85	88	77
Aware cost extra/are optional (a)	91	88	91	90	88	92	89	97
Not aware of this (a)	9	12	9	10	12	8	11	3
Have not heard of CCS	16	18	15	13	11	15	12	23
Base	(566)	(287)	(279)	(347)	(201)	(146)	(112)	(98)

Awareness of Custom Calling Services *Table 7.6*

The table opposite shows awareness of Custom Calling Services and, among those who are aware, whether they are aware that they cost extra and are optional.

Highlights

Awareness of Custom Calling Services is high among non-customers (76%) as well as among matched customers (84%).

Most of those aware of Custom Calling Services know that they are optional and that one pays extra for them. About one in ten non-customers is not aware of this – about the same as for matched customers.

By company: Awareness is equally high for both companies.

By ethnicity/race: Black and LD Hispanic non-customers are more aware of Custom Calling Services than are White or NLD Hispanic non-customers: 84% and 80% vs. 71% and 68% respectively. While the large majority of non-customers aware of CCS know that they are optional and cost extra, LD Hispanics are less aware of this than others (16% not aware).

Pacific Bell Tariff Sheets Relating to Nonpublished Service and the Use of Nonpublished Information

(From California's Unopposed Motion for Judicial Notice filed in the Ninth Circuit below on August 17, 1995)

Pacific Bell
San Francisco, California

SCHEDULE CAL.P.U.C. NO. A2.
1st Revised Sheet 136
In Lieu of Original Sheet 136 Rejected

NETWORK AND EXCHANGE SERVICES
A2. GENERAL REGULATIONS

2.1 RULES (Cont'd)

2.1.34 RULE NO. 34 – NONPUBLISHED SERVICE – RELEASE OF INFORMATION

A. RELEASE OF INFORMATION

1. Nonpublished Service

California Public Utilities Commission's Decision Nos. 92860 and 93361, in Case No. 10206, requires that each communications Utility, operating under the jurisdiction of the Commission, include the provisions of the rule set forth in Appendix "A" of that decision as a part of the rules in the Utility's tariff schedules. Accordingly, Appendix "A" of Decision Nos. 92860 and 93361, Case No. 10206 is quoted herein:

APPENDIX 'A'

Nonpublished Service

a. Definition of nonpublished service: Upon a customer's request, customer name, address, and telephone number are not listed in any telephone directory, street address directory, or in the

directory assistance records available to the general public. This information, as well as call-forwarding information from such unlisted telephone numbers, shall be released by telephone utilities in response to legal process or to certain authorized governmental agencies provided the requesting agency complies with the rules herein established for the release of nonpublished information.

b. Agencies authorized to receive nonpublished information:

(1) Any California public agency which employs persons who are peace officers pursuant to California Penal Code Section 830 and all subsections thereof.

(2) An agency of the federal government which is lawfully authorized to:

- Conduct investigations or make arrests for violations of the criminal laws of the United States; or,
- Prosecute violations of the criminal laws of the United States; or,
- Enforce civil sanctions which are ancillary to criminal statutes; or,
- Conduct investigations into matters involving the national security of the United States; or,
- Protect federal or foreign officials, or,
- Protect public health and safety or,
- Conduct emergency rescue operations.

(3) Any public health agency of the State of California or of a city, county, or other local government.

(4) County or city 911 projects.

(5) State Fire Marshall and Local Fire Departments or Fire Protection Agencies.

(6) Collection agencies, to the extent disclosures made by the agency are supervised by the Commission, exclusively for the collection of unpaid debts.

(7) California Public Utilities Commission pursuant to its jurisdiction and control over telephone and telegraph corporations.

c. Procedure for release of nonpublished information to authorized agencies.

(1) A telephone utility shall only provide nonpublished information to persons within authorized agencies who are either

- Peace officers pursuant to California Penal Code Section 830 and all subsections thereof and who are lawfully engaged in a criminal investigation in their official capacity, or

- Health officers who are acting in their official capacity and are lawfully investigating a matter involving a serious communicable disease or life-threatening situation, or

- Employees of an authorized federal agency acting in an official capacity pursuant to a responsibility enumerated in b.(2) preceding, or

- Employees of a county or city 911 project when acting in an official capacity, or

- Employees of an agency listed in b.(5) preceding when engaged in an investigation involving arson or when engaged in firefighting duties in which there is immediate peril to life or property.

(2) Nonpublished information shall be released by a telephone utility to an authorized agency upon the agency's written request provided that the agency has previously furnished the utility with a statement, signed by the head of the agency, requesting that nonpublished information be provided to the agency upon its written request, and listing designated persons, by name, and title, who are authorized to request, in writing, nonpublished information. The written request for the nonpublished information must be signed by the head of the agency or by a previously designated person and the request must state that the nonpublished information is necessary for a lawful investigation being conducted by the agency pursuant to its responsibilities.

(3) Nonpublished information shall also be released by a telephone utility to an authorized agency upon the agency's telephonic request, provided the agency has previously furnished the utility with a statement. It must be signed by the head of the agency, requesting that nonpublished information be provided to the agency upon telephonic request and listing designated

persons, by name, title, and telephone number, who are authorized to request, by telephone, nonpublished information. The telephonic request for nonpublished information must be made by the head of the agency or by one of the previously designated persons.

The nonpublished information requested by telephone shall be provided by the utility only on a call-back verification basis.

The requesting agency shall, within five working days after making the telephonic request, mail the utility a letter confirming the request.

d. Notification to Customer

(a) The telephone utility shall not notify a customer regarding the release of customer's nonpublished information unless the customer contacts the utility and specifically requests to know whether their nonpublished information has been released.

(2) When a customer inquires of the utility whether their nonpublished information has been released, the customer shall be informed that if information has been released they will be notified by mail about what information was released and which agency requested the information. If there was no release of nonpublished information, the customer will receive no communication from the utility.

(3) If requesting agency certifies that disclosure to a customer about the release of his or her nonpublished information to that agency could impede an ongoing criminal investigation, the telephone utility shall

withhold notice to the customer for a period of one year from the date of release of the information to the agency.

(4) The one-year period of nondisclosure shall be extended for successive one-year periods upon new written certification by the agency in each instance.

(5) If no request has been made for nondisclosure to the customer, the customer who inquires shall be notified in writing as to the identity of the agency which requested the nonpublished information and the information released.

If there has been a request for nondisclosure within 25 working days after the expiration of any outstanding certification for nondisclosure, or any renewal of such certification, a customer who has previously inquired, at any time during the period of nondisclosure, whether their nonpublished information was released, shall automatically be notified in writing by the utility that such information was released and which agency received this information.

e. Exception for Health Officers

No notification shall ever be made to a customer that nonpublished information was released to an authorized public health agency provided the chief health officer or designated health officer from the agency certifies that disclosure to the customer could violate a client's or contact's right of privacy and confidentiality.

f. Release of Information to Interexchange Carriers

The Utility will provide nonpublished information to an Interexchange Carrier who needs the information for allocation, billing or service purposes as set forth in Schedule Cal.P.U.C. No. 175-T.

g. Retention of Records

All written documents pertaining to nonpublished service shall be retained by telephone utilities for at least one year. When an agency requests that notice to the customer be withheld, the telephone utility shall retain the records involved for a period of not less than one year from the date on which the period of nondisclosure expires.

h. Unsolicited Telephone Efforts

The Utility will not contact nonpublished residence customers by telephone on an unlisted numbers(s) for unsolicited sales efforts.

Pacific Bell SCHEDULE CAL.P.U.C. NO. A5.
San Francisco, California 1st Revised Sheet 524
In Lieu of Original Sheet 524 Rejected

NETWORK AND EXCHANGE SERVICES
A5. EXCHANGE SERVICES

5.8. OPERATOR SERVICES

5.8.1 LOCAL OPERATOR VERIFICATION/INTERRUPT SERVICE

Where facilities and operating conditions permit, the Utility's Toll Operators may verify a busy line condition and/or interrupt a conversation in progress at the calling party's request. The charges for such service are $.50 to verify and $1.00 to interrupt.

No charge will apply to the following:

When the Operator finds the called telephone line to be out of order.

To place a call to or from any public agency whose responsibility it is to provide or render emergency aid.

5.8.2 NON-PUBLISHED NUMBER REPORT

Upon request of an urgent or emergency nature, the Utility Operator will arrange to attempt to reach the requested non-published number subscriber with the calling party's name and number. The non-published subscriber may agree to call back, or the calling party will be contracted by the Utility and informed the non-published subscriber is unwilling to call back or is unavailable.

The charge to the requesting party is $2.50 per request and is applied to the following:

The non-published number search, contacting the non-published subscriber and the report back to the calling party when the non-published subscriber refuses to contact the requesting party; or

The non-published number search and contacting the non-published subscriber when the non-published subscriber does not refuse to contact the requesting party.

For a charge to apply, each task listed under either item preceding must be completed by the Utility.

No charges will apply to the following:

The non-published subscriber cannot be reached by the Utility after three attempts.

When the non-published subscriber refuses to contact the requesting party and the Utility fails to report back to the requesting party.

The operator will notify the requesting party of the applicable charges at the time such a request is made.

Date Filed: MAR 4 1985
Advice Letter No. 14889 Effective: APR 18 1985
Decision No. Resolution No. T10914
Issued by
Robert B. Roche
Executive Director – State Regulatory

Excerpt from Pacific Bell Notice of Ex Parte Communication Filed with CPUC on September 15, 1995

(From California's Unopposed Supplemental Motion for Judicial Notice Filed in the Ninth Circuit below on October 10, 1995)

Caller ID – Customer Notification and Education

To proceed with customer notification, several issues needed to be resolved . . .

- There should be no linkage between customer notification and litigation in the 9th circuit court

  The CPUC staff has indicated that Pacific's notification plan should describe the steps that will be taken in the event that the CPUC prevails in the litigation. This appears to connect our plan with the litigation. Pacific Bell cannot predict the impact of court action.

- The Commission should provide timely review of the notification plan and resulting awareness levels

  Pacific has proposed a formal 30 day review period for our plan and a 17 day review period for the resulting awareness levels. The staff has indicated that more time is likely to be required. Pacific would like to present an aggressive schedule to the FCC in our request for an extension. Timely review by the CPUC is very important. (See attached timelines)

- Z-Factor treatment is appropriate for extraordinary notification costs

  Customer Notification is a regulatory requirement linked to the passage of Calling Party Number. The CPUC requirements will result in approximately $30M of notification expense. This is an extraordinary cost to Pacific Bell that should be considered for Z-factor treatment.

- The Commission should have reasonable expectations on consumer awareness levels

  Pacific Bell is prepared to devote significant resources to customer notification. Nevertheless, it is unreasonable to expect that 100% awareness is achievable. The survey of awareness will be most useful in determining the type of ongoing customer education that is needed.

Excerpt from Pacific Bell Customer Notice and Education Plan Filed with CPUC on October 11, 1995

(From California's Unopposed Second Supplemental Motion for Judicial Notice Filed in the Ninth Circuit Below on October 16, 1995)

PACIFIC BELL

CUSTOMER NOTIFICATION AND EDUCATION PLAN ON CPN DELIVERY

OCTOBER 11, 1995

CPN CONSUMER EDUCATION:
Evaluation Process

Awareness Estimate:

The Pacific Bell CPN Education Campaign will provide notification to 100% of our customers through bill inserts. In addition, the proposed media plan reaches 97% of our customers an average of 33 times with our education message.

Current awareness levels of the ability to block number delivery, and the fact that numbers will be delivered (as determined in our benchmark survey in July) are 19% and 28% respectively, among residential customers. We expect to increase those numbers significantly, perhaps even double the current percentages. However, it is physically impossible to obtain 100% awareness.

Our estimated awareness levels as a result of this Education Plan are:

- 25-40% aided awareness of the ability to block number delivery
- 50-65% aided awareness that numbers will be delivered

Estimating projected awareness for an educational/informational message, is not a scientific formula. It is only an estimate, based on our collective experience and historical data. For perspective, a similar education campaign we conducted for IRD, with roughly the same media weight at high reach and frequency levels, achieved 49% overall awareness, an increase of 19 points above the original 27% benchmark awareness level.

We have every confidence that our CPN Education media plan (including television, radio, magazines and newspapers in

five languages) combined with the outreach programs directed to the hard-to-reach segments of the market, will generate the significant level of awareness of blocking options that both we and the Commission are seeking.

EXCERPT FROM INTERVENORS BRIEF OF PAC BELL AND GTEC IN SUPPORT OF FCC FILED IN NINTH CIRCUIT BELOW ON SEPTEMBER 27, 1995

California imposes this default for all "non-published" subscribers – approximately 50% of all California telephone customers. Thus, under the California default position, half the population would be outside of Caller ID.

CURRENT TELEPHONE COMPANY STATISTICS ON NONPUBLISHED AND UNLISTED TELEPHONE NUMBERS

Pacific * Bell
A Pacific Telesis Company

Steven M. Schuppert
Director
Access & Competitive Services

San Francisco, California 94105
(415) 542-4317
Fax (415) 546-4119

July 5, 1995 (U 1001 C)

Mr. Jack Leutza
Commission Advisory and Compliance Division
California Public Utility Commission
505 Van Ness Avenue, Room 3203
San Francisco, CA 94102

Dear Mr. Leutza,

This is in response to your June 23, 1995, request for information regarding unlisted and non-published residential services. As of June 30, 1995, the following statistics regarding Pacific Bell's residential service should provide the specific information you requested:

	SOUTH	***NORTH***	***TOTAL***
RESIDENCE LINES			
Total Lines	4,584,460	5,161,793	9,746,253
Omit Address	1,849,252	1,376,486	3,225,738
DA Only	25,876	32,800	58,676
Non-Pub	2,227,214	2,497,728	4,724,942

RESIDENCE ACCOUNTS			
Total Accounts	4,478,689	5,084,404	9,563,093
Multiple Lines	88,456	67,906	156,362
Multiple Lines w/Non-Pub	608	453	1,061

If you have any questions about the information being provided, please call me.

/s/ S.M. Schuppert

cc: M.J. Purcell

A340

(LOGO) **GTE California Incorporated**

One GTE Place
Thousand Oaks,
CA 91362-3811
805 372-6000

CA50OGCC

July 3, 1995

Ms. M. J. Purcell
California Public Utilities Commission
505 Van Ness Avenue, Room 3D
San Francisco, CA 94102

Dear Ms. Purcell:

The following is in response to your data request, received June 28, 1995, regarding multiple line residential customers and nonlisted, nonpublished customer listing information.

Question 1: Provide the number of households subscribing to more than one line (this number should include households with any mix of service, i.e., two residential lines, or a mix of residential and business lines).

Response: 338,210 Households

Question 2: Provide the number of multiple-line households who subscribe to either an unlisted or non-published number.

Response: 299,349 Households

Question 3: Provide the current residential line total at your utility.

Response: 2,549,062 Lines

Question 4: Provide the current number of residential lines subscribing to non-published or non-listed number service.

Response: 1,858,442 Lines

The above responses represent actual customer billing data as of June 30, 1995.

If you have any questions regarding this information, please contact me on (805) 372-7072.

Sincerely,

/s/ Kurt R. Rasmussen
Kurt R. Rasmussen
Regional Staff Administrator –
Regulatory Affairs

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Art. VI, Cl. 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const., Amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const., Amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const., Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or

naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., Amend. IX

The enumeration in the Constitution, or certain rights, shall not be construed to deny or disparage others retained by the people.

Cal. Const., Art. I, § 1

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

STATUTORY PROVISIONS INVOLVED

5 U.S.C. § 706

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall –

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be –

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

47 U.S.C. § 152(b)(1)

(b) Exceptions to Federal Communications Commission jurisdiction

Except as provided in sections 223 or 224 and 225 of this title and subject to the provisions of section 301 of this title and subchapter V-A of this chapter, nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . .